Decisions of Speakers

of the

West Bengal Legislative Assembly

Volume VI

Decisions of Mr. Speaker Saila Kumar Mukherjee and his Deputy, Mr. Deputy Speaker Ashutosh Mallick

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Secretariat of the Legislative Assembly
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PART I

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PART I

Decisions of Mr. Speaker Saila Kumar Mukherjee

Amendment—Effect of rejection

An amendment to the Address in reply to the Governor's speech to the effect that "the House regrets that no effective step was taken to counter the move for merger of West Bengal and Bihar" was lost. It was ruled that a motion that "the House approves of the proposal for merger of West Bengal and Bihar of which notice had been given did not fall through as a consequence of the rejection of the amendment to the Address in reply".

Proceedings, dated 21st February, 1956. Vol. XIV, No. I, pp. 453-54.

Adjournment motion—matter which is sub-judice

An adjournment motion in respect of a matter which is *sub judice* is not admissible. A matter becomes *sub judice* as soon as a person is arrested on a criminal charge and produced before a magistrate.

Proceedings, dated 16th April, 1952. Vol. VI, No. 2, pages 976.

Adjournment motion—when ordinary parliamentary opportunity for discussion will occur,

An adjournment motion cannot be allowed when an ordinary parliamentary opportunity will occur shortly for the discussion of the subject sought to be raised by the motion.

Proceedings, dated 25th June, 1952. Vol. VI, No. 1, page 91.

Adjournment motion—on general discussion on the budget

An adjournment motion on a matter which can be raised in the general discussion on the budget is inadmissible.

Proceedings, dated 16th July, 1952. Vol. VI, No. 2, page 976.

For Full Ruling *see* Appendix, pages 21-22.

Adjournment motion relating to a matter alleged to be a breach of privilege

An adjournment motion relating to a matter which is alleged to be a breach of privilege of the House is not admissible. The proper course is to bring in a substantive motion of breach of privilege.

Proceedings, dated 16th July, 1952. Vol. VI, No. 2, page 976.

Adjournment motion—on question of policy

A question of policy cannot be the subject-matter of an adjournment motion.

Proceedings, dated 23rd March, 1953. Vol. VII, No. 2, page 1715.

Adjournment motion—where normal legal remedies available

Where normal legal remedies are available, an adjournment motion is inadmissible.

Proceedings, dated 29th April, 1953. Vol. VII, No. 3, pages 421-22.

Adjournment motion—must be accompanied by a statement of facts and reasons

An adjournment motion in order to be admissible should not be anticipatory in character and must be accompanied by a statement of facts and a statement of reasons why the business of the House is to be adjourned.

Proceedings, dated 27th April, 1953. Vol. VII, No. 3, page 246.

Adjournment motion—discussion on Governor's Speech

An adjournment motion on a subject on which a discussion can be had during the debate on the Governor's Speech is inadmissible.

Proceedings dated 21st June, 1953. Vol. VI, No. 1, page 30.

Adjournment motion—Refusal of consent by Speaker—Discussion in House

When consent to an adjournment motion is refused no discussion regarding the same can take place in the House.

Proceedings, dated 6th February, 1953. Vol. VII, No. 1, page 239.

Bill—Amendment—Scope of

An amendment proposed to add the words "with regret" after the word "ratifies" in a resolution proposing to ratify the amendment of the Constitution was ruled out of order.

Proceedings, dated 16th February, 1955. Vol. XI, No. 1, pages 407-408.

Bill—Amendment—Scope of—in amending Bill

When certain sections of an Act are proposed to be amended and the amending Bill has a close preamble, amendments to sections of the main Act which are not sought to be amended are out of order.

(H.C.D. vol. 122 c 1886; H.C.D. vol. 99 c. 818 referred to.)

Proceedings, dated 11th February, 1953. Vol. VII, No. 1, page 622.

For full Ruling, *see* Appendix, pages 31-32.

Bill—amendment of several Acts by one amending Bill.

A Bill seeking to amend several Acts is not out of order.

Proceedings, dated 20th August, 1955. Vol. XII, No. 1, page 345.

For full Ruling, *see* Appendix, page 31.

Bill—Shortening of time of notice

The period of notice required for giving notice of Bills or amendments may be shortened by the Speaker; but he must be satisfied that exceptional circumstances exist for exercising the discretionary power of the Speaker

Proceedings, dated 21st June, 1952. Vol. VI, No. 1, page 34.

Bill—reference to Joint Committees

A Bill may be referred to a Joint Committee of the two Houses.

Proceedings, dated 7th May, 1953. Vol. VII, No. 3, page 1072.

For full Ruling *see* Appendix, pages 39-41.

Bill—ultra vires—provision for free residence

"Allowance" includes allowance in kind, e.g., provision for free residence. Such a provision in a Bill for providing salaries and allowances of Ministers is within the scope of the Bill and is not *ultra vires* the Constitution.

Proceedings, dated 25th June, 1952. Vol. VI, No. 1, page 117.

Budget—Appropriation Bill

In the Appropriation Bill in respect of demands for grants voted by the House, the actual demand voted should only be included. Amounts which have already been voted on account and included in the Appropriation (Vote on Account) Bill should be excluded.

Proceedings, dated 18th March, 1953. Vol. VI, No. 3, page 77.

Budget—Appropriation Bill—Debate—Scope of

Proceedings, dated 4th August, 1952. Vol. VI, No. 3, page 1377.

For full Ruling *see* Appendix, pages 24-25.

Budget—Discussion on matters relating to charged expenditure

When an expenditure is a charged one (e.g., salaries of High Court Judges) a discussion is allowed on the items of expenditure subject to constitutional limits although no cut motion may be moved. Where a demand includes both charged and voted expenditure, cut motions are allowed on the voted expenditure. At the stage when demands are made, discussion should be confined to voted items only.

Proceedings, dated 21st July, 1952. Vol. VI, No. 3, page 196.

Budget—Inclusion of amount voted on account in final demand

The amount of money which has already been voted on account should not be included in the final demand. The final demand should be made only in respect of the balance of the total demand deducting therefrom the amount which has already been voted on account.

Proceedings, dated 18th July 1952. Vol. VI, No. 3, page 17.

For full Ruling *see* Appendix, pages 22-24.

Budget—Revised Estimate after vote on account

When a budget has been presented and a vote on account taken on portion of the demands, there is no bar in submitting a revised estimate on the occasion of making final demands. But the proper course would be to proceed with the original estimate and to bring a supplementary budget for any increased amount found necessary.

Proceedings, dated 18th July, 1952. Vol. VI, No. 3, page 17.

Contingency Fund—withdrawal of money.

A demand for the grant of a sum of money authorised by the Governor to be withdrawn from the Contingency Fund is in order.

Proceedings, dated 4th August 1952. Vol. VI, No. 3, page 1374.

For full Ruling *see* Appendix, page 24.

Cut motion—To raise discussion about acquisition of property without compensation

A cut motion which was tabled to reduce a demand by Rs. 100 in order to raise a discussion about acquisition of property without compensation is not out of order because acquisition of property without compensation is not absolutely forbidden by the Constitution.

Proceedings, dated 4th March, 1953. Vol. VI, No. 2, page 251.

Debate—Citing of documents—Private documents whether should be laid on the table

It is only public documents which are required to be laid on the table.

Proceedings, dated 25th August, 1955. Vol. XII, No. 1, page 600.

Debate—Parliamentary conduct

It is not parliamentary to mention the names of officers when criticising the Government. The Ministers concerned are accountable for the inefficiency or corruption of their officers.

Proceedings, dated 12th March, 1956. Vol. XIV, No. 3, page 120.

Pleading for a particular person is not a good parliamentary practice.

Proceedings, dated 20th February, 1956. Vol. XIV, No. 1, page 390.

Debate—Party decisions whether can be referred to

No reference can be made to decisions made in Party meetings.

Proceedings, dated 20th March, 1953. Vol. VII, No. 2, page 1619.

Debate—Reference to proceedings in Select Committee

No reference to the proceedings of the Select Committee can be made in the House.

Proceedings, dated 23rd March, 1956. Vol. XIV, No. 3, page 845.

Debate—Reference to Bill not introduced or circulated in the House

A Bill which has not been introduced or circulated in the House may not be referred to.

Proceedings, dated 18th February, 1953. Vol. VII, No. 1, page 923.

Debate—Right of reply

The mover of a resolution has a right of reply and the Minister of the Departments concerned has a further right.

Proceedings, dated 30th September, 1955. Vol. XII, No. 4, page 165.

Debate—State Re-organisation Commission Report Discussion of—Scope of amendment

For full Ruling see Appendix, pages 55-56.

Division—Reasons.

There are two reasons for which a division is called (1) to test the Speaker's verdict when he makes an estimate by voice vote and (2) to test the strength of the parties in the Opposition. When the division has been on a particular clause and the doors were shut, it is not necessary that a number of divisions should be called on each amendment to that clause.

Proceedings, dated 1st August, 1956. Vol. XV, No. 3, page 42.

Governor's Speech—Debate on

Amendments may be moved to the Address in reply to the Governor's Speech on matters which are not included in the Governor's Speech.

Proceedings, dated 2nd July, 1952. Vol. VI, No. 2, page 74.

Motion—Right of Rescission

The House has a right to rescind a motion which had been passed previously in the same session. This power is not hit by the rule of repetition.

Proceedings, dated 28th February, 1956. Vol. XIV, No. 2, pages 60-62.

For full Ruling *see* Appendix .

Non-official business—Notice of motion on resolution by member belonging to the Government party

Government business means business initiated by a Minister on behalf of the Government. All other business is non-official business. A notice of motion or resolution given by a member is non-official business even though he may belong to the Government party.

Proceedings, dated 31st July 1952. Vol. VI, No. 3, page 1047.

Opposition—Recognition of official Opposition

Where there are more parties than one in opposition, the party which is numerically the largest of them all cannot necessarily be recognised as the official opposition. Three things are necessary before a party can be recognised as the official opposition. It must be an organised opposition in the House; it must have the largest numerical strength; and it must be prepared to assume office.

Proceedings, dated 7th August, 1952. Vol VI, No. 3, page 1637.

For full Ruling *see* Appendix, page 26.

Opposition—Recognition of Leader of the Opposition

Leader of a particular party or group may be recognized as the leader of the official opposition only by agreement among the parties or groups concerned or where the strength of that particular party or group is combined strength of the other parties and groups.

Proceedings, dated 27th April, 1953. Vol. VII, No. 3, page 255.

Papers—Distribution—in the House

Papers which are not connected with the business of the House should not be distributed within the House.

Proceedings, dated 15th March, 1956. Vol. XIV, No. 3, page 309.

Privilege—Arrest and detention of members during Session

Proceedings, dated 20, March, 1954. Vol. IX, No. 2, page 1582.

For full Ruling *see* Appendix, page 43.

Privilege—Inaccurate Report in Newspapers

A misleading head line in a newspaper will constitute a breach of privilege.

Proceedings, dated 25th March, 1957. Vol. XVI, pages 418-420.

For full Text *see* Appendix, page 61.

Privilege—Press Statement

A Press statement that the Government considered the rejection of an amendment to the Address in reply to the effect that no steps had been taken to counter the move for the merger of West Bengal and Bihar has an approval as proposal for the merger was published in some newspapers as "Assembly appproves of the proposal for merger". It was ruled that considering the circumstances there was no *prima facie* case of breach of privilege.

Proceedings, dated 23rd February, 1956. Vol. XIV, No. 1, pages 540-43.

Privilege—Breach of—Reflection on certain members

The writing of a letter by a stranger alleged to contain a reflection on certain members of the House and the reading thereof in the House was held to be *prima facie* a matter which should be referred to the Committee of Privileges.

Proceedings, dated 6th August, 1952. Vol. VI, No. 3, page 1558.

For full Ruling *see* Appendix, page 25.

Question—Nondisclosure of names of persons granted loan by the State Finance Corporation

When the Government declined to disclose the names of persons to whom loans had been granted by the State Finance Corporation on the ground that it was against public interest and banking practice, it was ruled that the Government was entitled to withhold the names so far as private persons are concerned. So far as public Companies are concerned, Mr. Speaker observed that the names of such Companies should be disclosed.

Proceedings, dated 30th August, 1955 and 23rd September, 1955. Vol. XII, No. 2, pages 13-15.

For full Ruling *see* Appendix, page 50.

Questions—Scope of Supplementary, based on newspaper reports

A supplementary question based on newspaper report is inadmissible.

Proceedings, dated 14th September, 1955. Vol. XII, No. 3, page 70.

Questions—Supplementary—Scope of

Supplementary questions are meant for eliciting further information and not for confirmation of facts within the knowledge of the questioner.

Proceedings, dated 19th August, 1955. Vol. XII, No. 1, page 241.

Reflection on the Chair

If a member desires to bring a deliberate and specific charge of misconduct against the Speaker, the proper course is to bring a motion of no confidence on the Speaker. If reflections are made on the Chair in the course of the debate on such a charge, no question of breach of privilege arises. If, however, reflection is made on the Chair during the course of a debate, the member should be asked to withdraw the expression and if he does not, disciplinary action may be taken against him.

Proceedings, dated 27th April, 1953. Vol. VII, No. 3, page 253.

Resolution—Amendment—Scope of

A resolution having been moved "that the Assembly do take the report of the States Reorganisation Commission into consideration" it was ruled that no amendments should be admitted.

Proceedings, dated 6th December, 1955. Vol. XIII, page 75.

Resolution—Amendment seeking to substitute different context

An amendment which sought to substitute an entirely different context after the word "that" was ruled out of order. The amendment must be within the scope of the original resolution.

Proceedings, dated 9th September, 1955. Vol. XII, No. 2, pages 505-506.

Resolution—Subject-matter not within State responsibility

A resolution on a matter not within the State Responsibility, e.g., germ warfare in Korea is not admissible.

Proceedings, dated 7th August, 1952. Vol. VI, No. 3, page 1719.

For full Ruling *see* Appendix, pages 28-29.

A resolution on a matter which is not within State responsibility, e.g., Foreign Affairs or Defence is not admissible.

Proceedings, dated 6th April, 1954. Vol. IX, No. 3, page 964.

For full Ruling *see* pages 46-48.

Resolution under proviso to Article 368 of the Constitution—Scope of amendment

An amendment seeking to add with regret to a resolution for ratification of a Bill under the proviso to Article 368 of the Constitution was ruled out of order.

Proceedings, dated 17th February, 1955. Vol. XI, No. 1, page 407.

For full Ruling *see* page 48.

Speaker—Delegation of power by

Under the rules of procedure, the Speaker has the authority to delegate his powers to the Deputy Speaker.

Proceedings, dated 9th February, 1955. Vol. XI, No. 1, page 45.

Speaker—Power of—to modify rules of procedure

Rule 53 of the West Bengal Legislative Assembly Procedure Rules was modified in order to enable a joint committee of the two Houses to be constituted for the purpose of considering the Estates Acquisition Bill, 1953. It was held that the alteration of the rule came within the meaning of "modification" under Article 208(2) of the Constitution.

Proceedings, dated 7th May, 1953. Vol. VII, No. 3, page 1072-76.

Supplementary Budget—Scope of discussion

Questions of general policy cannot be discussed during the debate of supplementary budget.

Proceedings, dated 23rd March, 1953. Vol. VII, No. 2, page 1717.

Unparliamentary conduct—Obtaining of signatures on document purporting to support a proposal of which notice had been given

It was alleged that signatures of members were being obtained in a document purporting to support a proposal for the merger of West Bengal and Bihar; notice of a resolution approving such merger was pending before the Legislature. It was ruled that obtaining of signatures purporting to support a motion of which notice had been given was canvassing for posts and was not parliamentary.

Proceedings, dated 23rd February, 1956. Vol. XIV, No. 1, page 560.

Unparliamentary conduct—Criticism of an Act

Criticism of an Act is permissible when an amending Bill is before the House. A disrespectful or abusive mention of a statute passed by the Legislature is unparliamentary.

Proceedings, dated 8th March, 1956. Vol. XIV, No. 2, page 746.

Unparliamentary conduct—Refusal to withdraw expression and subsequent walkout by members

When a member was asked to withdraw an expression held to be unparliamentary but he refused to do so and withdrew from the House, no question of breach of privilege arose. When the party to which the offending member belonged also walked out it was held that the walk out could not be interpreted as a protest against the ruling of the Chair.

Proceedings, dated 27th April, 1953. Vol. VII, No. 3, page 256-57.

Unparliamentary expression "Assemblyতে শয়তান আছে"

The expression "Assemblyতে শয়তান আছে" was ruled as unparliamentary.

Proceedings, dated 8th September, 1955. Vol. XII, No. 2, page 464.

Unparliamentary expression 'coward'

A member having stated that "he did not sit like 'coward' on the other side", it was ruled that the word 'coward' in the context was not unparliamentary.

Proceedings, dated 16th February, 1954. Vol. IX, No. 1, page 62.

Unparliamentary expression "dogs bark but the caravan passes on"

The expression "Dogs bark but the caravan passes on" is a metaphorical expression and is not unparliamentary.

Proceedings, dated 26th February, 1954. Vol. IX, No. 1, page 784.

Unparliamentary expression "ridiculous"

The expression "ridiculous" in a context may be unparliamentary. The word was held to be unparliamentary when a member referred to the speech of the Chief Minister which he was going to deliver as 'ridiculous'.

Proceedings, dated 27th April, 1953. Vol. VII, No. 3, page 256-57.

Unparliamentary expression "বেশ্যাবৃত্তি"।

The expression "বেশ্যাবৃত্তি" is not unparliamentary when used as occurring in a quotation and it may be used in a suitable context.

Proceedings, dated 18th March, 1953. Vol. VII, No. 2, page 1425.

For the complete Ruling see Appendix, pages 33-34.

Unparliamentary expressions

(1) পদলেহনকারী।

(2) তৈলমর্দনকারী।

(3) উনি মিথ্যা কথা বলেছেন।

(4) Agent of a foreign State.

(5) Agents of Anglo-America.

(6) Irresponsible member.

(7) Shut up .

Expunging—Inherent power of Speaker

Having regard to the peculiar circumstances of the country it was held that as the Speaker is responsible for all publications for the publication of the proceedings of the House, he must have an inherent power to prevent the abuse of the right of speech and the same discretion to exclude vulgar or indecent expressions from the proceedings.

Proceedings, dated 27th April, 1953, Vol. VII, No. 3, pages 250-58.

For the complete Ruling see Appendix, pages 34-38.

Expunging—Right of Speaker

Observations were made on the right of the Speaker to expunge unparliamentary expressions.

Proceedings, dated 29th January, 1957. Vol. XVI, pages 55-59.

For full Text see Appendix, pages 57-61.

Ultra vires—imposition of taxes on pilgrims

The Ganga Sagar Mela Bill, 1953, which sought to impose a tax on pilgrims is not hit by Article 27 of the Constitution and the State Legisture is competent to enact such legislation.

Proceedings, dated 19th February, 1953. Vol. VII, No. 1, page 1032.

Ultra vires—deciding scope of

In deciding whether a Bill is *ultra vires* the Speaker would consider only whether it is prima facie outside the competence of the Legislature, e.g., whether it is hit by any rules of procedure. When a Bill is challenged on a ground which depends upon the interpretation of the Constitution or law, it would be a matter for the courts of law to decide and Speaker would not in such a case rule out the Bill.

Proceedings, dated 12th November, 1953. Vol. VIII, pages 253-56.

For full Ruling *see* Appendix, pages 41-43.

Ultra vires—interpretation of constitutional law

When a Bill is challenged as *ultra vires* and the competence of the Legislature depends upon the interpretation of law or the Constitution, the Speaker will not shut out the Bill to leave the point to be decided by courts of law.

Proceedings, dated 30th August, 1955. Vol. XII, No. 2, pages 29-31.

For full Ruling *see* Appendix, pages 53-55.

Ultra vires—ruling out of clause

When the clause of a Bill was challenged as *ultra vires* of the Legislature, it was ruled that the House could throw out the clause if it thought that the clause was *ultra vires*. The Speaker will not rule out such clause.

Proceedings, dated 17th July, 1956. Vol. XV, No. 2, page 46.

PART II

Decisions of

Mr. Deputy Speaker Ashutosh Mallick

20th September—30th September, 1954

PART II

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Adjournment motion—No discussion, when consent refused

One is not allowed to read the subject matter of an adjournment motion consent to which has been refused but there is no objection to the Chief Minister making a statement on the subject.

Proceedings, dated 22nd September, 1954. Vol. X, No. 2, p. 713.

Debate—Time-limit for—when not enforceable.

Time-limit of speeches cannot be enforced when there is no debate for an adjournment motion but members should stick to the time-limit unless the Chair, if he so desires, gives a few minutes to the speaker.

Proceedings, dated 20th September, 1954, Vol. X, No. 2, pp. 520 and 521.

Debate—Whether time-limit can be made during discussion on a Bill

A member having asked "Sir, how can you limit the time", Mr. Dy. Speaker observed:

> There are no rules, of course, but in certain circumstances if there are repetitions or members dwell on irrelevant matters not connected with the Bill, there the Speaker has a right to stop it.

Proceedings, dated 21st September, 1954. Vol. X, No. 2, p. 562.

Decision of the Chair not to be altered—

It is the duty of the member to see that the decision of the Chair is not altered when once taken since it is one of the fundamental rules of Parliament. In deciding an issue, the Speaker may be right or may be wrong but whatever it is, it is there and nobody is to question the decision thereof.

Proceedings, dated 22nd September, 1954. Vol. X, No. 2, p. 770.

Division—Discretion of the Chair to decide

Clause 4 of a Bill was declared to have been passed by voice vote and the Dy. Speaker was requested to reopen the division since a division was called whereupon Mr. Dy. Speaker observed:

> The clause has been passed with amendments. The records are there and I cannot go back. I shall be the last person to reopen it again. I have already declared that Clause 4 as amended do stand part of the Bill and at this I cannot go back.*** It is the discretion of the Chair to say whether a division is in order or not, and I did not allow that division. So I cannot reopen the question now.
>
> * * * * *
>
> But the Chair must see whether the division is obstruction or not.*** I am sorry you are not present all through when I allowed four divisions in a clause. Now if you want divisions on every amendment it will be very difficult to conduct the business of the House.

Proceedings, dated 22nd September, 1954. Vol. X, No. 2, pp. 766-67.

Division—Fundamental right of the Opposition to call

On the subject of Opposition's right to call division, Mr. Dy. Speaker observed:

> Biren Babu, I accept your observation that it is the fundamental right of the Opposition to call a division no doubt, but it is also the inherent right of the Chair to see that the division is properly called, and it is also for the Chair to see if it is frivolous or is of an obstructive nature, and in that case the Chair may or may not allow the division. Division means challenging the decision of the Chair at every moment, it is very difficult to conduct the proceedings of the House, and the Chair has the right to say that it is a frivolous division and it is obstructive. I hope the members will realise the position and will allow me to continue the business of the House. Now I shall put the motions to vote.

Proceedings, dated 22nd September, 1954. Vol. X, No. 2, p. 758.

Point of order—Whether the leader of the House can address the House any moment

To the question as to whether the leader of the House can address the House while another speaker was speaking, Mr. Dy. Speaker observed:

> The Leader of the House can address the House at any moment. But there was an interruption and disorder. I am here to control any body in the House. No body should intervene and no body should interrupt. This is my ruling.

Proceedings, dated 20th September, 1954. Vol. X, No. 2, p. 517.

Question—Supplementary—Procedure of putting

Mr. Deputy Speaker observed as follows:

> I find honourable members are keeping silent and as soon as the next question is announced they want to put supplementaries. It is very bad. I thought that the supplementaries on this particular question were exhausted when I found no member rising to put any supplementary question. Members must be vigilant.***

Proceedings, dated 22nd September, 1954. Vol. X, No. 2, p. 674.

Sitting hours of the Assembly—Regulated by—desire and business of the House

The Chair has nothing to do with the hours of Assembly sitting. If the majority desires that the House be commenced at such and such time and the House be continued till such and such time then that desire would prevail and with regard to the business of the House and the time allotted for it, it is a question of understanding between different parties and Government.

Proceedings, dated 22nd September, 1954. Vol. X, No. 2, p. 814.

Proceedings, dated 29th September, 1954. Vol. X, No. 2, p. 1065.

Unparliamentary language

The word "চড় মারব" is most unparliamentary.

Proceedings, dated 22nd September, 1954. Vol. X, No. 2, p. 755.

Voting—Automatic—Whether change of voting system is in order or not and whether Deputy Speaker can effect such changes in the absence of the Speaker.

Electric vote recording system having been installed and in operation with the knowledge and consent of the members and the Speaker having the authority under Rule 38 of the Procedure to determine the manner in which the voting shall take place and if the Speaker had, by a written order, delegated all the powers and authority which were vested in him under the Assembly Procedure Rules to the Deputy Speaker, it is within the power of the Deputy Speaker to frame regulations or orders for determining the manner of voting and such order will not be inconsistent with any rules of procedure.

Proceedings, dated 29th September, 1954. Vol. X, No. 2, pp. 1087-89.

APPENDIX

Ruling regarding admissibility of adjournment motions

'Mr. Speaker: Now, with regard to adjournment motions, I received about 8 adjournment motions. I have considered all the adjournment motions of which notice has been given and I have also considered the previous rulings of this House and the practice and the privileges of the House of Commons which we follow not only because they afford us analogy and guidance in similar circumstances but also because under our Constitution the rights, privileges and immunities of the House and its members are the same as those obtaining there. Several members from the Opposition during the last fortnight have also referred to me on several occasions, the practice and conventions in the House of Commons in different matters. Considering all these matters, I have come to the conclusion that I ought not to depart from the settled practice and convention and should not give my consent to the adjournment motions. My reasons are the following:—

The adjournment motions relate to two matters—(1) Police action on processionists and (2) Arrest and assault of some persons including a member of this House. The generally settled practice is that in a Budget Session, particularly when the general discussions and debates on Budget are going on, every subject can be taken up. The objects of adjournment motions are only to talk for two hours on a subject. I think the same object can be completely fulfilled at the time of the general discussion on the Budget which is yet to go on for two days—ten hours.

In this connection some of the adjournment motions referred to a matter, and I think, I ought to refer to the analogous procedure in the House of Commons. As the honourable members are aware, an order under section 144, Criminal Procedure Code, prohibiting the holding of the meetings and processions has been promulgated on the area surrounding this House. The promulgation of such an order strictly accords with the practice obtaining in the House of Commons, where under statutes it is provided that whenever a session of the House is summoned, not more than ten persons shall appear together to the House of Parliament for the purpose of the presentation of a petition, and that not more than fifty persons shall meet together within the distance of one mile from the gate of Westminster Hall for the purpose of making any representation to the Parliament. Under sessional orders, the police is directed to keep the streets leading to the Houses of Parliament open and free from obstruction. And, further, it is considered a breach of privilege of the House for any number of persons to come in a riotous, tumultuous or disorderly manner to either House in order either to hinder or promote the passing of any Bill or other matters pending before such House. Therefore, if you are to follow that practice obtaining in the House of Commons, the House should, in my humble opinion, instead of relying on Government to promulgate an order under section 144 should rely on its own order of privilege to enforce such an order in this area around the Assembly building. However, that is a matter to which I shall refer on a future occasion and ascertain the views of the House.

As regards that part of the adjournment motion in respect of the arrest of Sj. Hemanta Kumar Bose, I have to consider whether a breach of privilege of this House has been committed. I have looked into the privileges of the House of Commons and of our House and it is absolutely clear that there is no privilege of freedom from arrest in respect of an alleged criminal offence. The only privilege of the House in such matters is that the House should be informed of the fact of the arrest or detention and the reasons therefor. I read out in the House yesterday the communication received by me regarding the arrest of Sj. Hemanta Kumar Bose from the Home Secretary and today a communication made from the Chief Presidency

Magistrate. However, still if any honourable member thinks that a breach of privilege has been committed, he may bring that matter by a substantive motion for consideration by the Privilege Committee of this House.

The third ground for my rejection is that the matter should be deemed to be sub-judice for as soon as a person is arrested on a criminal charge and produced before a Magistrate, the matter becomes sub-judice. I would quote here a passage from the judgment of the Calcutta High Court—King Emperor vs. J. Chowdhury—reported in 51 Calcutta Weekly Notes, page 700:

> It seems to me now fairly well-settled that in criminal cases for a proceeding to be pending, so as to give jurisdiction to punish for contempt, it is not necessary that the accused should be committed for trial or even brought before a Magistrate; it would be sufficient if he had been arrested and was in custody.

In this case the gentleman concerned has been produced before a Magistrate for trial. The House, therefore, according to the well-settled practice, is prevented under the Act and the provisions of the Constitution from discussing any matter which is sub-judice and in deciding whether a matter is sub-judice or not, I think the same principle, as laid down in the case cited above, should be applied both outside and inside this House. I have, therefore, on the above grounds withheld my consent to the adjournment motions tabled by honourable members although I do think that the motions relate to an urgent matter of public importance.

I may inform the honourable members that as some time may be taken up by them for debate on this particular issue in connection with the general discussions on the Budget, I am prepared to extend the time for debate within the statutory limit of four days. As tomorrow, the 17th, is the fourth day of the debate, I am prepared to hold a morning sitting for three hours so that members who, owing to unfortunate circumstances, might not have taken part in the debate and who also desire to introduce in the debate discussions arising out of yesterday's incidents, may have sufficient time at their disposal to discuss them.

If the honourable members are willing to sit tomorrow at 10 a.m. for three hours, I will be glad to hold such a meeting. If it is inconvenient to them to hold such a meeting tomorrow, then tomorrow's meeting will have to be adjourned for two sittings on the 18th, as I have not the power to extend the statutory limit for general discussion on the budget beyond four days.'

Proceedings, dated 16th July, 1952. Vol. VI, No. 2, pp. 976-980.

Ruling on the point of order raised on the 14th July, 1952, as to whether Demand for Grant can include amount voted on account previously

'Mr. Speaker: Before voting on demands for grants starts, I have to give my decision on two points of order raised before the general discussion of the Budget by Sj. Charu Chandra Bhandari and Sj. Bankim Mukherjee the other day.

A point of order was raised by Sj. Charu Chandra Bhandari and Sj. Bankim Mukherjee as to whether the Demand for a Grant at this stage should include the amount which has already been voted on account in respect of the grant. It appears that the booklet containing the motions for

demands that was circulated shows against each motion the amount of the total demand including the amount which has already been voted on account, and Sj. Charu Chandra Bhandari and Sj. Bankim Mukherjee contended that these motions were out of order.

The provision for a vote on account has been introduced for the first time in our Constitution, and it incorporates the practice which obtains in the House of Commons. Articles 202 and 206 lay down in general terms that the estimated amount of expenditure for any financial year shall be submitted to the Assembly in the form of Demand for Grant, that the Assembly can make grants in advance in respect of the estimated expenditure for a part of the year, known as the vote on account, as was done, and that a vote on account must also be taken on Demands for Grants. Neither Article lays down the details of procedure which has to be followed in making these demands. I have therefore looked into the practice which obtains in the House of Commons and I find that whenever a vote on account has been taken in respect of a demand, the subsequent demand does not include the amount which has already been voted, but is made only in respect of the balance of the demand left unvoted. And the reason is quite obvious. A part of the demand having already been passed by the House, there is no necessity for demanding that amount over again. Therefore, the contention of Sj. Charu Chandra Bhandari and Sj. Bankim Mukherjee is right, but I may inform the House that the Ministers are not going to move for the entire amount of the estimated expenditure for the year as shown in the budget in respect of the grants but will move for only the balance of each grant excluding the amount which has already been voted on account. The motions which are proposed to be moved will be in order.

Honourable members are aware that after the Demands for Grants are voted, an Appropriation Act will have to be passed. The provision also follows the practice in the House of Commons but some departure from that practice has been made in our Constitution. In the House of Commons, when a vote on account is passed, no appropriation is made by the Consolidated Fund Act passed thereafter except in the case of a vote on account before a dissolution. The appropriations are made by the Appropriation Act passed after the demands are finally voted. In the case, however, of a vote on account before a dissolution, an Appropriation Act has to be passed appropriating the grants to the several votes. The amount of supply left unvoted is dealt with by the succeeding Parliament and another Appropriation Act is passed in respect of such supply,—English Parliamentary Debates, 1866, Volume 306, and the Appropriation Acts of 1866. Article 203(2) of our Constitution, however, makes it obligatory to pass an Appropriation Act after a vote on account also and in this respect follows the practice of the House of Commons in the case of a vote on account before a dissolution. The amounts of the Grants passed on the vote on account having already been appropriated to the several grants by the Appropriation (Vote on Account) Act, 1952, it would not be necessary to appropriate them again by the final Appropriation Act. The Appropriation Bill which will be placed before the House after the grants are passed will therefore seek to appropriate the balance of the grants which will now be voted by the House.

Sj. Bhandari referred also to my previous ruling given on the day when the budget was re-presented to this House. I would like to make some clarification in regard to that ruling. It appears that some alterations have been made in the original budget presented in March last, and a revised

budget has been presented to this House. A new Grant, Grant No. 35A, has been included and in respect of two grants Nos. 30 and 43 the amounts have been increased.

Sj. Bhandari contended that it is not permissible to present two budgets for the same financial year and that the presentation of the Budget to this House was out of order. I held against his contention and on a re-consideration of the matter I do not think that my decision was wrong. The Constitution contemplates two stages for the consideration of the budget—(1) under article 206 when a vote on account is taken and (2) final voting of demands under article 202. If it is found necessary to alter the terms or amount of any grant there is no bar to the original budget being withdrawn and a revised budget presented. Of course, this cannot be done after the grants are finally voted. In that case a supplementary budget has to be presented. But even when the grants are not finally voted and it is found necessary to include a new service or to increase the amount of any grant, the modern practice according to May, is not to present a revised estimate but to proceed with the original estimate and to present a supplementary estimate for the new service of the increased amount. So far as the present budget is concerned it would have accorded with modern practice and would have been more proper to proceed with the original budget and to present a supplementary budget for the new service and the increased amounts. But it cannot be said that the presentation of the revised budget was out of order. I hope, however, that the Government would in future in such circumstances follow the modern practice referred to in May's Parliamentary Practice.'

Proceedings, dated 18th July, 1952. Vol. VI, No. 3, pp. 18-21.

Ruling on the point of order regarding Contingency Fund

'Mr. Speaker: Before I take up the West Bengal Appropriation Bill I should like to deal with the point of order raised by Sj. Charu Chandra Bhandari regarding Contingency Fund. I have considered the matter. I ruled the other day that the demand for Grant No. 30 was in order. I now proceed to give my reasons today. Article 267, clause 2, provides that the State Legislature may by law establish a Contingency Fund to be placed at the disposal of the Governor to enable advance to be made by him for the purpose of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature. A Contingency Fund Act was passed by the Legislature in 1950 which authorised the creation of such a fund with a sum of Rs. 50 lakhs. It appears that a sum of Rs. 11,25,000 was granted by the Vote on Account. Presumably, this amount fell short of the actual amount required and, therefore, it appears that Rs. 10 lakhs were authorised by the Governor to be withdrawn from the Contingency Fund pending the authorisation of the grant by the Legislature. Government have now come up before the House for the grant. There is no irregularity in the Demand and I rule that the Demand is quite in order.'

Proceedings, dated 4th August, 1952. Vol. VI, No. 3, p. 1374.

Ruling on the scope of discussion on the Appropriation Bill

'Mr. Speaker: I have considered the matter, Mr. Bhandari, but your analogy, so far as the House of Commons practice that you have now quoted is concerned, does not stand, because according to the House of Commons procedure where there is a question of appropriation after the demands are

made by the Committee of Supply, there the question of the Consolidated Fund Act and the Appropriation Act comes in. Here under our Constitution neither in the State nor in the Central Legislature any Consolidated Fund Act is passed. The Consolidated Fund is what is provided under the Constitution. Now the Budget that had been presented, and the demands that were made, and for which cut motions were moved and 20 days' discussions were allowed, have given the House an adequate and complete opportunity to discuss and either to vote or to refuse the supply on each and every item of demand with which the Treasury Benches had come forward. The object of the Appropriation Bill, so far as I understand, is to ensure that the appropriation of State Grants is made according to law. Even in the House of Commons when grants of supplies are made by the Committee of Supply, the appropriation of those grants again has to be made according to law. Therefore, the Appropriation Bill is exactly for simultaneously putting those grants in the Schedule to be put up before the legislature.

This is the law under which Government has power to spend money on the exact items of the demands voted by the House or refused by the House in case there is any refusal. So the House is only authorising the payment out of the consolidated fund. Previously this was done by the Governor under the Schedule to the Government of India Act, 1935, and there was no provision for such Appropriation Act. But under the new Constitution the House is given the power and the House is the sanctioning authority for payment. Moreover, under the Constitution the scope of discussion over the Appropriation Bill under Article 204(2) is limited. It is specifically stated that no amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final. Of course, wide powers have been given to the Speaker. That no amendment shall be allowed has been specifically stated in this Article 204 and its sole object is that where the House has during the last twenty days had the opportunity of discussion, it should not again raise the matter during the passing of the Appropriation Bill. Therefore since the new Constitution has come into effect and we have to consider the appropriation for the first time, I do think that some time should be allowed to discuss the principle of appropriation and particularly the new subjects about the principles of which the House had not an occasion to discuss. For instance, on the last day the guillotine was applied and there was no opportunity for discussion and on them on the ground of principle only the House ought to have an opportunity for discussion. In that view of the matter I will allow discussion on the Appropriation Bill, and I do that on the general principle as regards the subjects which the House had not an opportunity to discuss and I fix the period from 3-30 p.m. to 5-30 p.m. for general discussion on the Appropriation Bill."

Proceedings, dated 4th August, 1952. Vol. VI, No. 3, pp. 1377-78.

Ruling as to whether the contents of the letter of the Labour Commissioner read to the House by the Chief Minister constitute a breach of privilege

'Mr. Speaker: I had reserved my decision with regard to the point of order raised by Mr. Bankim Mukherjee. At the time of the debate on the Budget grant on the motion of the Labour Minister, some officers of the Government were mentioned by name with regard to their character and conduct. Exception was taken thereto by some members as to whether the

officers should be individually named or only their offices should be referred to. It was at that time pointed out that two previous rulings of this House discouraged such naming of officers. But in some cases names do appear in the proceedings. I am not concerned today to give a ruling as to whether in connection with the debate for charges of misconduct against a particular officer he should be named personally or by office. It has been held in numerous perliamentary proceedings as also in May's Parliamentary Practice that subject to rules of order in debate a member may state whatever he thinks fit in debate however offensive it may be to the feelings or injurious to the character of the individual and he is protected by his privilege from any action of libel as well as of any other questions of molestation. It has also been consistently held that speech and action in Parliament may be said to be unrestrained and free, but this freedom from external influence or interference does not involve any unrestrained licence of speech within the walls of the House. The House controls the action of its own members and enforces this control by censure, by suspension from the service, by commitment and by expulsion. It is therefore the right and privilege of the House to control its own members. Various abuses of the forms of debate, the use of offensive or insulting language to Parliament or to individual members may be thus dealt with. Freedom of debate therefore is entirely a privilege of the House.

After the debate on that day on the motion of the Labour Minister was concluded, the next day the Leader of the House read before this House a letter from the officer concerned who was named on the previous day, who wrote a letter to the Chief Minister in connection with the charges made against him on the previous day and submitted himself to the judgment of the House. In his submission to the Chief Minister in his letter he referred to some speeches of the honourable members of the House as "maliciously false". The point of order raised by Sj. Bankim Mukherjee is as to whether the officer concerned has hereby brought himself within the purview of the breach of privilege of the House. I think it is prima facie a matter which ought to be referred to the Privilege Committee and therefore I refer the complaint of Sj. Bankim Mukherjee that there has been a breach of privilege of the House by the communication reflecting upon the members of the House made by Sj. S. K. Haldar, Commissioner of Labour, to the Chief Minister by his letter, dated the 1st August, 1952, and by reading thereof in the House on 1st August, 1952, to the Committee of Privileges."

Proceedings, dated 6th August, 1952. Vol. VI, No. 3, pp. 1558-60.

Ruling regarding position of Opposition parties and the Leader of Opposition

'Mr. Speaker: Before we start with the business for the day I have to give my ruling on the point raised by some members about the question of the position of the opposition parties and the status of the Leader of the Opposition.

In course of the debate in this Session Sj. Radhagobinda Roy made an enquiry to the following effect:—

> "We shall be highly obliged if you will kindly let us know who are the party leaders in the Opposition and also the number of followers that they have got in each party."

On the same day the Leader of the House also stated his difficulties with regard to dealing with the opposition parties when they were divided into so many groups. I have been asked by several members also to explain the

party position in the House and to give my considered views as to the position of the opposition parties and as to the question of a Leader of the Opposition. The position of parties in this House is as follows:—

Name of party or group.	No. of members
Communist Party	30
National Democratic Party	17
Krishak-Mozdur-Proja Party	15
Forward Bloc	14
Unattached Independents	5
Congress Party	158

According to rules therefore excepting the Congress Party none but the Communist Party has obtained the status of a party. In my inaugural address I stated that it would be my humble endeavour to see that party machinery functions well and efficiently.

The importance of the Opposition in the proper functioning of a democratic form of Government cannot be ignored. May says in his Treaties on Parliamentary Practice—

> "For the Opposition, regarded as a parliamentary institution, it may be claimed that no better system has yet been devised for ensuring that the indispensable function of criticism shall be effectively co-ordinated and exercised in a constructive and responsible spirit."

This is the reason why the Opposition in the House of Commons has been given constitutional recognition by the assignment of a salary to the Leader of the Opposition. The Opposition has also the right of initiating in the choice of subjects for debate on supply days and on the King's speech. The Leader of the Opposition has also the privilege of asking the Leader of the House for information regarding the business of the House for a particular week. The expression "Leader of the Opposition" has been defined in the Ministers of the Crown Act, 1937, as "the Leader of the Party in Opposition to His Majesty's Government having the greatest numerical strength in the House." If any question arises as to which party is the party in opposition having the greatest numerical strength, the Speaker has been given the power to decide the question. The prevalence on the whole of the two-party system in the House of Commons has, as pointed out by May, usually obviated any uncertainty as to which party should be recognised as the official Opposition. The test of determining as to which party has a right to be called the official Opposition and its leader, the Leader of the Opposition, has been laid down by Mr. Speaker Fitzroy as follows:—

> "It must be a party in opposition to the Government from which an alternative Government can be formed."

May has paraphrased this as follows:—

> "It is the largest minority party which is prepared in the event of the resignation of the Government to assume office."

Now, therefore, where there are more parties in opposition than one, the party which is numerically the largest of them all cannot necessarily be recognised as the official opposition. The other test must also be satisfied, that is to say, it must be one from which an alternative Government may be formed. In 1935 when there were more than two parties in the House of Commons, the Conservatives having 387 members, the Labour Party 154,

the National Liberals 33 and the Liberals 17, it appears that the Labour Party was recognised as the official Opposition and its Leader, Mr. Attlee, was the Leader of the Opposition. On the other hand in 1939, a small party led by Mr. Maxton, when there was no other party in opposition, was not recognised as official Opposition. Three things are, therefore, necessary before a party can be recognised as, and given the privileges referred to above of, the official Opposition. It must be an organised Opposition in the House; it must have the largest numerical strength and it must be prepared to assume office. Where there are numerous small parties or groups, it cannot be said that these three tests are satisfied. In such circumstances the party which has the largest numerical strength among the opposition parties cannot be recognised as the official Opposition and its Leader given the status of the Leader of the Opposition unless all the parties unite as a single parliamentary Opposition Party. And it is quite reasonable because in that event, the other opposition parties would be deprived of the right of selection of subjects for debates and other privileges of the opposition parties.

In such circumstances, the practice is that matters in the selection of subjects and days and time for discussion of the Budget, etc., are arranged through what are called "the usual channels" that is to say, the Whips of the different opposition parties contact the Government Whip and arrange matters with him. The Whips of all the Opposition Parties and Groups should act in consultation with each other and in concert and any suggestion of the largest Opposition Party can only be accepted if it is agreed to by the other parties or groups.

Under the circumstances no single party or group in this House as at present constituted, can be given the status of official Opposition and no leader of any party or group in opposition in this House as they stand at present can be recognised as the Leader of the Opposition.

The Communist Party in this House would, however, be recognised as the chief Opposition Party and its Leader may be contacted in all matters regarding consultation with the opposition parties and it is hoped that agreed decisions of all the opposition parties and groups will be available for the growth of healthy opposition.'

Proceedings, dated 7th August, 1952. Vol. VI, No. 3, pp. 1637-40.

Ruling disallowing resolutions on Korea and on the competence of this Legislature what subjects can be discussed

'Mr. Speaker: I have very anxiously and carefully and respectfully listened to the arguments that have been advanced in support of the admissibility of this motion. Firstly, let me state what the motion relates to. It is a motion on a non-official day by a private member—private member's resolution. The object of a private member's resolution is to ascertain what the Government's viewpoint is on that matter; because the entire session of the Legislature is confined to Government business and there may be various other matters on which private members ought to know and ascertain and discuss their views for which provision has been made by rules for non-official day. The whole object of the discussion is not merely to raise an academic discussion or simply an academic debate but to ascertain what the Government's views are on the particular matter of the motion. That is the fundamental and essential characteristic of a non-official resolution. We must not lose sight of this thing. In that view of the matter let us see what the resolution states—convey to the Government of India the strong disapproval of the people of West Bengal of the germ warfare carried on in China and Korea and the bombing of the Yalu river power-plant by the

U.N. Command. Mr. Basu has referred me to rule 95(a)—it shall be clearly and precisely expressed and shall raise some definite issue. The motion has been clearly and precisely expressed and has raised a definite issue. Therefore the object for the discussion is what the West Bengal Government has got to say on this matter. Therefore, my first question to the sponsor of the resolution would be, under what circumstances, by what stretch of imagination can the West Bengal Government have any means to lay before this House for the enlightenment of the members their viewpoints on the germ warfare in China or the bombing of the Yalu river power-plant? Has the West Bengal Government got any staff, any file, any paper to enlighten the members of this House on this matter? (Sj. Jyoti Basu: It is for them to say.) Have the budget discussions that have gone on for days made any provision for a foreign department of the West Bengal Government to enlighten the members about the Government's view on the bombing of the Yalu river power-plant and the germ warfare in Korea and China? Looking from that point of view, therefore, the first objective of a non-official resolution is frustrated here because the object of a discussion of non-official resolution is frustrated.

But that is not the main point on which I base my own views.

Sj. Jyoti Basu: In that case please tell us also how to ascertain the views of the people living beyond the border of West Bengal when talking about linguistic province.

Mr. Speaker: I will come to that point. I have noted down your points one by one.

Then the question is what subjects the West Bengal Legislature is competent to discuss. A question has been raised that the people of West Bengal will be deprived of expressing their views or communicating their views to the Government of India. I think they have been suffering from a fundamental fallacy in that argument, because we are under a new Constitution, and all previous precedents will be of no avail when we discuss this question under the new Constitution. Under the new Constitution the electors who have sent us here on adult franchise have sent 34 representatives of the people of West Bengal for the Central Parliament. That situation never occurred before in the history of India. The people of West Bengal have got sufficient opportunity to express their voice in the Central Parliament through their 34 chosen representatives representing two and a half million voters of West Bengal. That contingency never occurred. Therefore, the 34 representatives of the people of West Bengal in the Central Parliament had ample opportunity to express the views of the people of West Bengal on the Bombing of the Yalu river power-plant and germ warfare in Korea. The question is, if they have got ample opportunity, will that thing be again repeated in this House? Therefore, we have got to see the rules and the Constitution. Under the Constitution specific definite compartments have been laid down. My friend Mr. Jyoti Basu has said and Mr. Bankim Mukherjee has said about different lists relating to legislation. May I in all seriousness ask Mr. Basu, 'can a legislation be contemplated before we have a clear idea about things?' The object of this non-official resolution is to draw the attention of the Government of India. In this House of Legislature we pass laws. If a policy is to be adopted, the Government has to take legislative measures. Now, if you look at the State List, it is clearly stated that not only war and peace but any matter relating to foreign affairs and foreign policy is outside the jurisdiction of the State Legislature. Thereby the Constitution has not provided that the people of

the State Legislature are debarred from expressing their views on matters like this. The object of providing State List, Concurrent List and Union List is to see that the members of the Legislature should confine themselves to definite and specific business. From that point of view I think the argument that West Bengal will have no opportunity to express their views on the Yalu river bombing and germ warfare falls to the ground. One gentleman has referred to a previous resolution of 1939 relating to Italian occupation of Abyssinia by the Government. I want to impress upon my friends that they must not forget that we have passed those days of 1939 when the policy of the then Prime Minister was dictated by British Imperialist interests. Therefore, that analogy is not applicable today in the present set of circumstances. Another argument has been made that in that view of the thing we could not have discussed the linguistic provinces just now discussed. May I draw the attention of my friends to Article 3? It lays down that if we have to change the boundary of Bengal, the State Legislature has got to consider it. It is obligatory under Article 3 that the State Legislature concerned must discuss, must make recommendation to the President to consider the question of alteration of the boundaries or increasing the area of the State. In that view of things it is completely within the four corners of the Constitution. The previous resolution is completely within the competence of the Legislature.

Another point has been made by Mr. Bankim Mukherjee—how municipalities and district boards could pass resolutions. My friend forgets that municipalities and district boards are creatures of Statutes. The Statutes by which the municipalities and district boards are created do not debar them from holding or discussing any resolution subject to the provision of those Statutes. Therefore, on the line of Mr. Bankim Mukherjee's argument I say that here the Statute debars a discussion on this resolution by the West Bengal Legislature. My object is not to shut out discussion, not to see that the voice of West Bengal is not represented, but not to create a bad precedent, because the Constitution has given ample opportunity of discussing this subject by West Bengal representatives in the Central Parliament. In that view of the matter, I think I should not be guided by any precedent prior to the introduction of this Constitution and prior to the General Election on adult franchise basis under the new Constitution.

With regard to the question of Commonwealth my friend has again overlooked the definite provisions of this Statute. Here under the State List everything concerning the powers, privileges, and immunities of the Legislative Assembly and of the members and the committees thereof, and if there is a Legislative Council, of that Council and of the members of the committees thereof, everything of the State Legislature is a subject-matter of the State Legislature. You are going to the Commonwealth Parliamentary Association. This is not outside the competence of the Legislature. Here the question is whether the Legislature which is a member of the Parliamentary Association will send its delegates or not. Here the question vitally affects West Bengal. A particular Legislature which has been already affiliated in 1937 should send its members to that Association, and without a decision of this Legislature I cannot contemplate of any situation by which a proper delegate from West Bengal can be sent. Therefore, that matter comes under the purview of the privileges of the members of the Legislature which the Constitution has provided in the State List. As I have already said I am not bound by those previous rulings. So far as I am concerned, I will have to see that when I am giving a ruling I am not creating a bad precedent, so that such unnecessary matters may not be

agitated both in the State Legislature and again in the Central Legislature when Constitution has made ample provision for the members of the State to agitate their view on an identical motion before the Central Legislature.

I think I have covered all the points that were raised by my friends opposite. Now I come to the rules and those rules clearly state that no resolution shall be admissible if it relates to a matter which is not primarily the concern of the Government of the State.'

Proceedings, dated 7th August, 1952, Vol. VI, No. 3, pp. 1720-1724.

Ruling on the point of order raised by Sj. Ganesh Ghosh regarding the admissibility of the Calcutta and Suburban Police (Amendment) Bill, 1955

'Mr. Speaker: As regards the Calcutta and Suburban Police (Amendment) Bill, 1955, Sj. Ganesh Ghosh raised a point of order as to whether under one Amending Bill two Acts can be amended. Well, this is the first time this question has been raised in this House. I could not lay my hands on any previous ruling, but I have hunted up several precedents both of this House and of the Centre and of the House of Commons, and I find that not only Amending Acts but there have been instances where by one Act several Bills have been consolidated, by one Act several Bills have been repealed, by one Act several Bills have been amended. An identical question has been raised for the first time in this House. So far as the Central Assembly is concerned under the Government of India Act, 1935, section 321, 18 Acts were repealed partially and wholly. As late as 1955 under the Finance Act, 1955, three Acts were amended namely, Income-tax Act, Indian Tariff Act, and Central Excise Act. Under the Representation of the Peoples Amendment Bill now pending before the House two Acts—Part III States Amendment Act as also Provisions of the Indian Penal Code are being amended. In this House in 1952 an identical Act, The Calcutta and Suburban Police (Amendment) Bill was passed whereby the Calcutta Police Act as also the Suburban Police Act were amended. Apart from that I had to consider the technical objections. For every technical objection I have to see how does it affect the merits of the case. The only point is that if Government had brought two Bills the same discussion would have been made. So how is the Legislature affected? Therefore, I do not think there is any bar for one Amending Bill to be brought to amend two Acts. In that view of the matter I hold that on Monday after the questions the Calcutta and Suburban Police (Amendment) Bill, 1955, will be taken up. The House stands adjourned till 3 p.m. on Monday next'.

Proceedings, dated 20th August, 1955. Vol. XII, No. 1, p. 345.

Ruling as to whether amendments can be moved to other sections of the principal Act not sought to be amended by an amending Bill

'Mr. Speaker: Ladies and gentlemen, I have very carefully considered the arguments advanced by Sj. Subodh Banerjee, Dr. Srikumar Banerjee and Sj. Jyoti Basu who raised the point of order on the admissibility of amendments Nos. 20 to 31 which relate to amendments to clauses of a statute which is not before the House for consideration.

On the identical question of admissibility the point was very elaborately considered by a previous Speaker, Sir Azizul Haque, *vide* Proceedings of the Assembly—Volume LI, No. 4, page 1639. I find that all the three members accept the argument therein given as correct and have nothing to complain against the ruling.

They have urged, however, that the present Bill can be differentiated therefrom, because it seeks to extend the life of the Act in addition to amending one clause, viz., clause 21.

The scope of a Bill cannot be outside its three branches, viz., (1) Preamble, (2) Statement of Objects and Reasons, and (3) Provisions of Clauses. Considering all the three parts of the present Bill it is found that the Bill has no open Preamble but has a closed Preamble. Sir Azizul Haque has also discussed that aspect of the matter thoroughly in his ruling, and I entirely agree with his decision.

This Bill being also in the nature of an Expiring Laws Continuance Bill, amendments to main clauses are clearly out of order, vide 1874, House of Commons Debate, 221, Chapter 1018; 1887, House of Commons Debate, 321, Chapter 199; 1925, House of Commons Debate, 188, Chapter 242; 1948-49, House of Commons Debate, 188, Chapter 242.

It has also been clearly laid down that when a Bill sought to modify certain sections in their application to particular circumstances, amendments to other sections of the main Act not before the House are out of order, vide May, 15th Edition, page 533; London Education Bill, 1903, House of Commons Debate, 122, Chapter 1886; Air Force Bill, 1917, House of Commons Debate, 122, Chapter 1886.

Amendments: It has always been clearly stated in the Procedure of Parliament that amendments must be relevant to and within the scope of the question to which it is proposed. There is no question before the House with regard to the clauses of the main Bill.

Sj. Subodh Banerjee has referred me to the cases of rulings supposed to be given by the Speaker of the Parliament in connection with the debate on London Education Bill.

My attention has been drawn to a statement made by the Speaker of the House of the People which, it is contended, ruled that amendments to sections of an Act other than those sought to be amended would be in order. In the first place, I do not find any such ruling given by the Speaker in the House of the People. He did not give any such ruling. On the other hand he stated that unless a "specific amendment to sections of the principal Act, not touched by the amending Bill, is brought before me and its affinity or relation to provisions of the amending Bill are examined, it would be difficult to say as to what particular amendment is or is not in order." So that it cannot be said that Mr. Speaker Mavlankar definitely ruled that such amendments would be in order. He also stated that it was unnecessary for him to decide the question at that stage. In the circumstances, therefore, I am unable to hold that there is any ruling of the Parliament to the effect as contended by Sj. Subodh Banerjee. In view of the definite ruling of this House, I have to rule that the amendments to sections of the principal Act not touched by the amending Bill are out of order.'

Proceedings, dated 11th February, 1953. Vol. VII, No. 1, pp. 622-624.

Ruling on the point of privilege raised by Shri Bankim Mukherji on the 17th March, 1953, regarding the use of the expression "বেশাবৃত্তি" etc.

Mr. Speaker: Sj. Bankim Mukherji yesterday raised three points as questions of privilege and I reserved the points for consideration. I have fully considered the matters and I now proceed to give my ruling.

The first point raised by Sj. Mukherji was about the use of the expression বেশাবৃত্তি by Sj. Mrigendra Bhattacharjya in the course of his speech on the Famine budget on the 17th March last. The expression by itself may not be unparliamentary and may be used in a suitable context, but whether an expression is unparliamentary or not has to be judged with reference to the context and the circumstances in which it is used. Sj. Mrigendra Bhattacharjya used this particular expression on another day in a context in which its use was not called for and in curmustances which, in my opinion, made its use unparliamentary and objectionable. I had to intervene on that occasion and disallowed the use of that expression. On this occasion, on the 17th March last, when this expression caught my ear, I thought that he was using the expression as his own in describing what the Government would think to be famine condition. I called him to order and although it was afterwards said that the expression had been used by Lord Lytton in a speech in describing famine condition, Sj. Mrigendra Bhattacharjya did not say so at that time and in fact he did not mention the name of Lord Lytton in his speech. I am firmly of opinion that merely because an expression has been used by a person of high position or eminence, its use would not be unparliamentary. It is now said that the sentence was a quotation from a speech of Lord Lytton, and I expressed the view that if that was so, the expression would not be expunged from the records. I have examined the official proceedings and I find that although Sj. Mrigendra Bhattacharjya did not mention the name of Lord Lytton, he began by saying that "a representative of the British Government, etc." This sentence had escaped me on that day, and I think in the circumstances the use of the expression cannot be said to be absolutely unparliamentary. I allow the expression to remain as part of the proceedings.

The second point raised by Sj. Bankim Mukherji was about the nomination of the associate members to the Delimitation Commission. Under section 5 of the Delimitation Commission Act, the Speaker is authorised to nominate associate members having due regard to the composition of the House. The West Bengal Legislative Assembly at the time of nomination consisted of 237 members, and having regard to the party strength three members were entitled to be nominated from the Congress Party and one from the Opposition. Now the fact is that there is no single Opposition Party in this Assembly. There are four important Opposition Parties, the Communist Party, the Praja-Socialist Group, then known as the Krishak-Praja Group, the Forward Bloc, and the National Democratic Group. It was naturally difficult for me to choose between these Parties.

If I preferred one, the other may be dissatisfied. On the other hand, if I choose an independent member who is always, as I find from the continuous proceedings, siding and voting with the Opposition and was an important member on the opposite side as a whole, I ran less risk of being accused of preference or hostility to any particular party or group. Besides, Sj. Biren Roy who is the Founder and President of the Bengal Municipal Association and has been closely accociated with municipalities, local boards and district boards for a considerable number of years and had intimate knowledge of election and constituencies in the mofussil, would

I thought, be able to render useful assistance to the Delimitation Commission in the question of the redistribution of boundaries of the constituencies and would be helpful to the Opposition as a whole. In these circumstances, I nominated Sj. Roy as an associate member from the Opposition. Sj. Bankim Mukherji has made it clear that he has no objec- circumstances, I nominated Sj. Roy as an associate member from the Congress Party have also been selected by me on territorial basis, one from North Bengal, one from the Presidency Division and the last one from the Burdwan Division.

The third point raised is about the nomination of the panel of Chairmen. It may be noted that the members of the panel for this session are exactly the same as that for the previous session. It may also be noted that two of them belong to the Congress Party, of whom one is a lady. Of the other two, one is from the Praja-Socialist Group and is a senior member of the Assembly, and the other is from the Forward Bloc. I was elected Speaker on the 20th June, 1952 and my first act as Speaker on the next day, i.e., one the 21st June, 1952, at 10 a.m. was to announce the panel of Chairmen. Party alignments were not exactly known on the very next day of the first session after my election and I acted on the knowledge which was then available to me. No one took any objection or told me anything about the composition of the panel of Chairmen at any time during or after the last session until the question was for the first time raised on the floor of the House yesterday. Accordingly I took it that the arrangement was satisfactory to everybody, and I nominated the same members to constitute the panel of Chairmen for this session. Had my notice been drawn to this matter, I might have considered the whole aspect of it and made the nomination accordingly.

It has been stated by Sj. Bankim Mukherji that his party felt that it has been ignored by me in these matters. I can assure him and his party that this was far from my intention. As the custodian of the rights and privileges of the House I am bound to, and will, treat all the parties, whether on the left or on the right with the equal concern and equal consideration. It is also my duty to see that the Chair not only acts with impartiality but the minority must feel that he is acting impartially. I may also say that any breach of parliamentary discipline or privilege whether by members on the right or the left will not be allowed.

I regret that Sj. Bankim Mukherji thought fit to use expressions such as the Chair started with some bias against his party and described my ruling given on previous occasion as absurd. I have tried to do my duty to the best of my knowledge and judgment and leave the matter to the good sense of the honourable member whether he should like to withdraw the reflection cast on the Chair.'

Proceedings, dated 18th March, 1953. Vol. VII, No. 2, pp. 1425-29.

Ruling of Mr. Speaker regarding the right of the Chair to expunge proceedings—Reflection on the Chair, recognition of the Leader of the Opposition, use of word "ridiculous", etc.

'Mr. Speaker: Before the proceedings of the House are taken up I have to give my decisions on several rules and several points of order which were reserved by me. The first one relates to the right of the Chair to expunge proceedings.

A question was raised on the 18th March, 1953, by Sj. Charu Chandra Bhandari supported by Sj. Subodh Banerjee whether the Speaker has any power to direct the expunging of any matter from the official proceedings of the Assembly and they referred to certain passages from May's Parliamentary Practice (page 445, 15th edition).

Two short sentences of two speakers on two different occasions during the course of this entire session were directed to be expunged by me on the ground of indecency of language and thought. After seeing the publication in the unrevised proceedings the point of order was raised. There is no specific rule on the matter in the Assembly Procedure Rules: but I find that under the old rules of the Bengal Legislative Council which exsited prior to 1947, there was a Standing Order (Standing Order No. 11) which authorised the President to expunge any part of the proceedings which referred to statements or expressions which he considered unparliamentary. In the Council of States also there is an existing rule (rule 221) which expressly authorises the Chairman to expunge the words which are defamatory or indecent or unparliamentary or undignified. In the Bengal Assembly, however, the matter was governed by practice and convention and I have ascertained from records that there have been occasions when unparliamentary expressions and reflections or indecent language have been expunged. I may refer here to a ruling of Mr. Speaker, Azizul Haque, in which he stated that the Speaker had a discretion to expunge from official reports for which he was responsible, remarks which he considered to be reflections on any person. The remarks expunged by him occurred in the minute of dissent of a member of a Select Committee (Proceedings, volume LIV, No. 1, page 156).

As regards the practice in the British House of Commons referred to by Sj. Bhandari, I may state that the cases referred to in May's Parliamentary Practice relate to the expunging of entries in the journal and not of any matter from the official report of debates or Hansard as it is called. The journal keeps a record of what has been done or ordered to be done by the House, and not of what has been spoken in the House. That is to say, it records the acts of the House and not the speeches of the members. The speeches are reported in the Hansard. The distinction is material because any entry expunged from the journal means expunging an act of the House or in effect undoing what had been done by the house. It goes without saying that it is only the House which can direct the expunging of any entry in the journal. Here also we keep a journal. The Speaker can possibly have no authority to expunge anything which would have the effect of nullifying an act of the House.

As regards the expunging of unparliamentary expressions or reflections from the debates I have not found any authority of the House of Commons either way. I must say, however, that although objections to unparliamentary expressions and reflections have often been taken and action taken against members, no question of expunging any such expression or reflection seems to have ever been raised. On the other hand, as mentioned by Sj. Bhandari, I find that there is a practice of taking down unparliamentary words so that action may be taken against the member using them.

The practice in the Congress of the United States of America is that the Speaker can expunge from the Congressional Records words spoken by a member after he has been called to order.

In the Indian Parliament, as I have already stated, there is a specific rule in the Council of States, but it does not appear that there is any such rule in the House of the People. In the former Central Legislative Assembly, there have been occasions when passages have been expunged from the Proceedings by order of the House. (Central Assembly Proceedings, volume LIV, page 2525).

I do not therefore find any uniform practice or rule either in this country or abroad by which I may be guided. It should be remembered also that in this country speeches are made in the House in more than one different languages; already five different languages were used in this House, and words may occasionally escape notice at the time they are uttered owing to the ignorance of the particular language. Having regard to the peculiar circumstances of our country, I am of opinion that the Speaker, who is responsible for all publications in the Assembly must have, as inherent in his power, to prevent the abuse of the right of speech, some discretion to exclude from the proceedings expressions which are vulgar or indecent, and unusable in polite society. As regards expressions or reflections which are considered unparliamentary, the Speaker would be reluctant to expunge any such matter on his own authority. In such cases the proper course would be to ask the member concerned to withdraw the expression or reflection and if he refuses to do so to take such disciplinary action against him as is provided by the rules.

There is another question in which also a point of order and privilege was raised in which I reserved my ruling.

On the 17th March, 1953, Sj. Bankim Mukherji raised certain points as matters of privilege and I gave my ruling thereon on the question. In the course of my ruling I had occasion to observe as follows:

"I regret that Sj. Bankim Mukherji thought fit to use expressions such as the Chair started with some bias against his Party and he described my ruling given on a previous occasion as absurd which may amount to a reflection on the Chair. I have tried to do my duty to the best of my knowledge and judgment and I leave the matter to the good sense of the honourable member whether he should like to withdraw the reflections cast on the Chair."

On the 19th March, 1953, Sj. Bankim Mukherji made a statement in which, referring to my observations made on the previous day, he made it clear that neither he nor his Party had any intention of casting any reflection on the Chair. In fact he stated as follows:

"You know, Sir, that I have got great regard and admiration for you personally and our Party has got no intention of casting any reflection and as spokesman of our Party I can assure you, Sir, that we had no intention of casting any reflection on you."

I accepted the statement made by Sj. Bankim Mukherji that he had no intention of casting, and he did not cast, any reflection on the Chair and he desired that the matter should end there.

Sj. Iswar Das Jalan, however, rose to a point of order and asked for a ruling whether any reflection can be cast upon the Chair except on a motion of no confidence and he said that he wanted a ruling not on any abstract proposition but on the specific question and on the fact of the case before the House.

There can be no doubt and it is well settled, that the Speaker's conduct cannot be impugned except on a substantive motion of no confidence. But a distinction has to be made between a deliberate and specific charge of misconduct against the Speaker and the use by a member in the course of a debate or argument, of expressions which may be interpreted as or may amount to a reflection on the Speaker. In the former case, of course, as I have already stated, the proper and the only course is to bring a substantive motion of no confidence. In the latter, the member's attention is drawn to the expression used and he either withdraws the expression or apologises or if he does not make proper amends, suitable disciplinary action is taken against him. Indeed, no question of breach of privilege arises when a member criticises the conduct of the Speaker on a motion of no confidence. He is entitled to do so and no exception can be taken to any reflection that may be cast on the Speaker. It is only when a member casts a reflection on the Chair otherwise than on a motion of no confidence that a question of breach of privilege arises.

There are numerous instances in the House of Commons in England where expressions have been taken exception to as casting reflection upon the Chair while no motion of no confidence was before the House. In many instances the members concerned have withdrawn the expression and expressed regret, in many they have made clear that they had no intention of casting any reflection, in many they have been punished for contempt of the House. In this Legislature itself the previous Speakers have had many occasions to take exception to remarks which were in the nature of reflection to the Chair, but on the members withdrawing them no further action was taken. (Vide Proceedings, volume LI, No. 3, page 871; volume LIV, No. 2, page 71; volume LIV, No. 11, page 170.)

On the facts of the case there cannot be any motion of no confidence. For when the member assured the House that he had no intention of casting any reflection on the Speaker, the very foundation of a motion of no confidence was gone. Any reflection on the Chair except in a motion of no confidence, is a serious matter and as Sj. Jalan has pointed out it is not only the Speaker but the dignity of the whole House is involved. And I would certainly not tolerate any reflection to be made on the conduct of the Chair. But whether any and what action is called for would depend upon the facts of a particular case. In this case Sj. Bankim Mukherji fully explained what he meant by his speech on the previous day and categorically stated that neither he nor his Party intended to cast any reflection on the Chair and that in fact he did not cast any reflection. In the circumstances, I accepted his explanation and did not intend to take any further steps. I have fully considered the matter and I do not think that the point of order which Sj. Jalan raised arises on the facts of the case.

In this connection I have to make some observations as regards the grievance that has been made by Sj. Bankim Mukherji about the non-recognition of the Leader of the Communist Party as the Leader of Opposition and his reference to other States. I have ascertained from information received from other "A" class States which has been tabulated in the annexed table that the Leader of a particular Party or Group has been recognised as the Leader of Opposition either by agreement among several Parties or Groups in Opposition or where the strength of that Group or Party is greater than the combined strength of all the other Parties or Groups in Opposition. The same is the position with regard to

the House of the People. I have followed the identical principle in deciding whether the Leader of the Communist Party here should be recognised as the Leader of the official Opposition and I have not been furnished with any additional ground for revising my opinion.

Next, another point of privilege and order was also reserved. Dr. Srikumar Banerjee on the 8th April, 1953, raised a point of order and requested me to consider whether I would withdraw the ban on the use of the word "ridiculous" which was held by me to be unparliamentary in the debate made on the previous date.

The word "ridiculous" comes ultimately from a Latin root meaning "laughter" and it means normally that which provokes laughter with derision and mockery. Whether a particular word is unparliamentary or not always depends upon the context in which it is used. In my opinion when the other day this word was used with reference to the speech which the Chief Minister was going to deliver and repeated twice in the context, Sj. Jyoti Basu made it quite clear that whatever speech the Chief Minister was going to make on the debate before the House would evoke nothing but derisive laughter and would be frivolous in contrast to what he asked him to state in reply to his question. With this impression to be gathered from the statement of the speaker, I think that while the word by itself may be harmless and innocuous in other contexts, this context made it objectionable in the sense that it was against the dignity of the House to use such an expression with regard to the speech which was about to be delivered by the Leader of the House and, as such, it was unparliamentary in the context in which it was used and carried a reflection against an honourable member as if he is in the habit of making speech which is always ridiculous.

In this connection Sj. Prafulla Kumar Banerjee raised a point of privilege and wanted my ruling as to whether the conduct of Sj. Jyoti Basu in walking out of the House and not complying with my request to withdraw for using an expression which was held by me as unparliamentary amounted to be a breach of privilege and contempt of the Chair. I have given due consideration to the matter. The procedure is well settled. When the Chair holds an expression to be unparliamentary and requests a member using the same to withdraw it, it is his duty to withdraw the expression. If he does not comply with the request, the next step for the Chair is to direct him to withdraw from the House for the rest of the sitting. If he fails to comply with that direction, the Chair refers the matter to the House by naming the offending member and usually the Leader of the House for the time being moves for his suspension from the service of the House. This motion is put to the question without amendment, adjournment or debate. If the House agrees to the suspension, the Speaker again directs the member to withdraw and if he still persists in refusing to do so, even when summoned by the Speaker, force is resorted to. In such a case, suspension of the member is for the remainder of the session. Here, therefore, before that stage arrived for my giving any direction to the offending member to withdraw, he anticipated my order and stated that if I insisted, he would walk out. I was insisting and I would certainly have insisted. That clearly shows that he anticipated my order and removed himself from the House voluntarily before my order was passed. With regard to the question of his party walking out with him, that cannot be indentified with walking out in protest against my ruling. Other Opposition parties also walked out subsequently, stage by stage, in connection with the discussion about meeting the refugee demonstrators outside the Assembly House. In that view of the matter, no further disciplinary action is called for.'

Proceedings, dated 27th April, 1953. Vol. VII, No. 3, pp. 250-58.

Ruling regarding admissibility of the motion for Joint Select Committee of the West Bengal Estates Acquisition Bill, 1953

On the 7th May, 1953, when the West Bengal Estates Acquisition Bill, 1953, was referred to a Joint Select Committee, an objection was taken that the Bill cannot be referred to a Joint Select Committee on the following grounds among others, viz., (1) that this matter of the formation of Joint Committee and the Rules should come under clause (3) of Article 208; (2) that the Speaker has no authority to make the Rules under clause (2) of Article 208; (3) even if the Speaker has the authority, he cannot make it from time to time; (4) that this is a new rule altogether. By modification, the Speaker cannot do it—unless there be an amendment which can be made only by the Legislature concerned; and (5) even supposing the rule is valid, it cannot be acted upon because there is no similar rule in the Council.

Mr. Speaker delivered the following ruling:

'Mr. Speaker: The Points of Order raised by the honourable members are certainly points of very great importance. Because in this House for the first time I have to act under the powers given to me by the Constitution, Article 208(2). Mr. Bhandari in the first instance raised a question that if the change in the rules is made under Article 208(2), because it is a Joint Committee, therefore it must be a rule as to communication between the two Houses. Hence it is the Governor's power and not the power of the Speaker. I would invite the attention of Mr. Bhandari to West Bengal Legislature (Procedure with respect to Communications) Rules, 1952, which have been published in the Extraordinary Gazette of June 24, 1952, which read as follows:—

"1. These rules may be called the West Bengal Legislature (Procedure with respect to Communications) Rules, 1952. The Rules are very wide.

2. (1) All communications between the two Houses of the State Legislature shall be made by sending a message from one House to the other.

(2) A message conveying any communication from one House to another House shall be signed by the Chairman of the Legislative Council or by the Speaker of the Legislative Assembly, as the case may be, and shall be conveyed by the Secretary of the one House to the Secretary of the other, or in such other manner as the Chairman and the Speaker may agree.

(3) Such a message shall at the earliest opportunity be read to the receiving House by its Secretary and laid on the table:

Provided that if the receiving House is not in session copies of the message shall forthwith be communicated to the members of the House by its Secretary."

Therefore it is clear that rules about communication between the two Houses are there and are being acted upon. Any motion of this House which concerns consideration by the other House—it can be done under the existing rules. Therefore, reference to Article 208(3) does not apply so far as the adaptation made by me in the present circumstances is concerned.

Dr. Srikumar Banerjee: Does communication include giving a direction to act in a certain way?

Mr. Speaker: No, it does not.

Dr. Srikumar Banerjee: Sir, here is a direction that four members from the Council are to be selected.

Mr. Speaker: It is a communication—sending a message from one House to another. That is a communication from this House to the other. This House shall communicate to the other House by sending a message to the Chairman signed by the Speaker.

The next point therefore is whether the action I have taken under Article 208(2) of the Constitution is right or it is ultra vires. Let me point out that Article 208(2) of the Constitution provides that the rules of procedure in force immediately before the Constitution came into force would continue to apply subject to such modifications and adaptations as may be made therein by the Speaker. On this point one argument has been made by Mr. Bhandari that once I did it my power is exhausted, and since the existing Assembly Rules were done by the then Speaker under the Constitution under Article 208(2) the power of the Speaker to make adaptation or modification under Article 208(2) has been completely exhausted and the Speaker is helpless to act under this clause. I do not agree with it for the following reasons. Firstly an argument has been made that modification meant slight change. I have consulted International Law. Modification is any alteration or change of a partial character. It is a change of a partial character of rule and not of an entire character. It is clearly a modification of the rule, and since the Constitution has given the power to the Speaker I think as the circumstances require the Speaker has power to act in the circumstances. This power has been given to the Speaker in order that the rules may be adapted to the new circumstances coming into existence after the Constitution came into force. New circumstances have arisen and the Speaker has power. By virtue of that power I have modified and adapted the rules so as to provide for cases that would come up because of the setting up of the Legislative Council in West Bengal. There is no bar to the appointment of a Joint Committee of the two Houses if the two Houses agree to that course. This modification in Rule 53 has been made so as to enable a motion being made for the appointment of a Joint Committee. I may say in this connection that even assuming that I had not made this adaptation, even then this House would have been competent to consider the substantial motion made by the Hon'ble Speaker as in the House of Commons they had done. But for greater safety I have acted under the Constitution. We have nothing to do with the Council Rules. If the Council agrees, then only a Joint Committee can function. If this House agrees to the setting up of a Joint Committee, a message will be sent under the West Bengal Legislature (Procedure with respect to Communications) Rules, 1952, to the Council for their concurrence. If the Council agrees, then a Joint Committee will function; otherwise the Bill may be referred to a Select Committee by a separate motion. Joint Select Committees are appointed in the British Parliament under Standing Order No. 38. Recently a Joint Committee was appointed in the Indian Parliament in the case of the Preventive Detention (Second Amendment) Bill, 1952. In Bengal there is a precedent also; a Joint Committe was set up in 1940 in respect of the consideration of Bengal Motor Vehicles Rules by a simple resolution even though there was no express rule providing for such a Joint Committee.

Then there is another point of Mr. Bhandari which has been supported by other members also, that this power under Article 208(2) is not a general power which I cannot exercise as occasion arises. In that connection I have drawn his attention and I would again refer to it in my ruling

—clause 14 of the General Clauses Act. It makes it clear—"Where, by any Central Act or Regulation made after the commencement of this Act" (namely General Clauses Act) "any power is conferred"—here a power has been conferred on the Speaker ["then, unless a different intention appears" (that has been deleted)] "then that power may be exercised from time to time as occasion requires". I have seen the occasion arises; I have power to function on that from time to time. Therefore, this power of the Speaker is not exhausted by simply making a rule on one occasion but he may do it so long as the rules are not made by this House; under Article 208, it has power to make modification and adaptation.

In these circumstances I hold that the motion of Mr. Basu is quite in order."

Proceedings, dated 7th May 1953. Vol. VII, No. 3, pp. 1072-76.

Ruling on the Point of Order (raised on the 9th November, 1953) as to whether the Bengal Board of Revenue (Amendment) Bill, 1953, was within the competence of the Provincial Legislature

'Mr. Speaker: A point of order was raised by Shri Sudhir Chandra Ray Chaudhuri as to whether the West Bengal State Legislature is competent to consider the Bengal Board of Revenue (Amendment) Bill, 1953, as introduced by Hon'ble S. K. Basu, Minister-in-charge of the Land and Land Revenue Department. In view of the constitutional point raised I requested both the mover and the Minister-in-charge of the Bill to fully express their views on the matter and I had the privilege of their able assistance. The Bengal Board of Revenue (Amendment) Bill, 1953, is a very short Bill and it purports to insert only one section in the Bengal Board of Revenue Act, 1913. The object of the Bill as stated in the objects and reasons is "that the Board of Revenue should have powers to deal adequately with any contempt of the Board or in respect of any proceedings before it for maintenance of its dignity and prestige", and the proposed section seeks to invest the Board with the power of a High Court in respect of punishment for contempt. The main contention of Shri Ray Chaudhuri is that there is no provision in the Constitution under which State Legislature has any authority to consider and pass a Bill as has been presented before the House. According to him under the provisions of the Constitution no Court can be invested with the power of a High Court in respect of a punishment for contempt far less for a Board which according to him is an administrative department of the Government and not a Court dispensing justice. In this connection reference was made by both sides to legislative powers of the State as provided in item 3 of list (ii) (State List) and item 14 of list (iii) (Concurrent List) under the Seventh Schedule to the Constitution. The Seventh Schedule to the Constitution has reference to Article 246 of the Constitution which provides in extenso the subject-matter of laws to be made by Parliament and by the State Legislatures. Item 14 of list (iii) states, "Contempt of Court but not including contempt of the Supreme Court". This Bill provides for legislation with regard to the contempt of the Board of Revenue.

The argument of Shri Ray Chaudhuri was confined to the point that "Board" is not "a Court"; therefore item 14 of list (iii) is not applicable and therefore the Bill does not come under the competency of the State Legislature. Arguments have been advanced by the Minister-in-charge of the Bill by citing references to prove that the Board is a Court and as such is covered by item 14 of list (iii). To decide that question, therefore, I have to decide on the constitutional validity of a particular provision of the Bill or rather on the merits of the Bill. Our Constitution provides for

numerous powers to High Court and Supreme Court to declare a statute passed in the State Legislature or Parliament or any of its provisions as ultra vires of the Constitution. I have, therefore, to consider whether the Speaker should usurp to himself those powers of the judiciary for deciding the constitutional validity of the provisions of a Bill, thereby depriving the members of the Legislature a free scope of the expression of their views on the provisions of the Bill. It is conceivable that the House may take a different view as to the entire Bill or its provisions as introduced by the Minister-in-charge. It is also quite conceivable that any particular provision of the Bill may stand modified and substantially altered as a result of discussions and deliberations in the House. It is also conceivable, as has happened on many occasions, that considering the views of the House, the Minister-in-charge may withdraw the Bill or any of the provisions. The question, therefore, is—, should a Speaker take upon himself the duties of interpreting the constitutional validity of the provisions of a statute under consideration when his interpretation has no binding effect on the judiciary and should a Speaker by his decision shut out the deliberations of a Bill, if the Bill is prima facie within the competence of the Legislature? I find that prima facie under item 14 of list (iii) in the Seventh Schedule State Legislature is competent to pass any legislation in respect of contempt of Court. The contention of Shri Ray Chaudhuri may be right or may be wrong as to whether the Board is Court or not; vice versa, the contention of the Minister-in-charge may be right or may be wrong. I need not go into that question at all. The proper course for me is to leave the citizens to question its validity if and when the question arises. So far as I am concerned, it would not be proper for me to decide the constitutional issue and throw out the Bill by my interpretation of a word in a clause of the Bill. In this connection I may refer to two previous rulings of the Speaker, Janab Azizul Haque, to one of which my attention has also been drawn by Shri Subodh Banerjee. My views are entirely in accord with the ruling of Janab Azizul Haque, that is, a Speaker should not decide the question as to whether a Bill is ultra vires of the Constitution. The only question of ultra vires about which the Speaker has to be absolutely satisfied is whether prima facie the State Legislature is competent to legislate on a subject.

The principle that the question of ultra vires of a Bill has to be decided, if occasion arises, by courts of law and not by the fiat of the Speaker, has been established in parliamentary practice in the British and Commonwealth Parliaments. I may refer to Hatsell, Vol. II, p. 227, Hansard's Parliamentary Debates, Vol. 150, p. 2104 (1888), and Redlich, Vol. I, p. 31, Vol. II, p. 167. Bourinot in his Parliamentary Procedure and Practice, p. 180, has summarised the rulings in the following language:—

> "The Speaker will not give a decision upon a constitutional question nor decide a question of law though the same be raised on a Point of Order or Privilege."

When a question was raised as to whether certain provisions were contrary to the provisions of the 14th Chapter of the Consolidated Statutes of Canada, it was ruled that according to the usage of the British Parliament, the Speaker was not bound to decide on a question of law, vide Beauchesne Parliamentary Form and Precedents, p. 825.

If the Government so desire the Bill may be proceeded with leaving the question of competency to be decided, if necessary, elsewhere. As to the contention whether a department of the Government should be entrusted with the summary power of commitment for contempt, that is a matter

for the House to decide. It would be for the House to decide the question which is one of merits and not of constitutional interpretation.

I therefore hold that the Board of Revenue (Amendment) Bill, 1953, should be proceeded with.'

Proceedings, dated 12th November, 1953. Vol. VIII, pp. 253-56.

Ruling on question of privilege as to whether a member can be detained during the continuance of a session

'Mr. Speaker: Honourable members will remember that I reserved my ruling on the question of privilege raised by Shri Bankim Mukherji. I propose to give my decision today.

On the 5th March, 1954, Shri Bankim Mukherji raised a point of privilege and requested me to refer to the Committee of Privileges the specific point whether during the session of the Assembly a member can be detained under the Preventive Detention Act. He referred to the cases of arrest under the Preventive Detention Act of Shri Ambica Chakravarty, Shri Subodh Banerjee and Shri Jyoti Basu. In connection with that request Dr. Kanailal Bhattacharya also stated that he was detained by Police without trial for eleven days, and therefore his privilege was curtailed, and this matter should also be referred to the Privilege Committee for decision.

The facts of the case out of which this question of breach of privilege arises are these:

On the 16th and 17th day of February respectively three members of the House were arrested under warrant issued under section 3 of the Preventive Detention Act, and intimation was sent to me forthwith by the Commissioner of Police, Calcutta, according to recognised parliamentary privileges. Shortly thereafter, messages were read out by me intimating the House about such arrests. Similarly with regard to Dr. Kanailal Bhattacharya, I received intimation over the phone from the District Magistrate, Howrah, intimating to me about the arrest under the West Bengal Security Act which was later followed by written communication from him, and message in that connection was also announced by me before the House. Shri Jyoti Basu was arrested by the Police on the 27th of February, 1954, under a warrant issued under section 3 of the Preventive Detention Act on 15th February, 1954, and intimation of his arrest was similarly forthwith communicated to me by the Commissioner of Police which was announced by me before the House. After Shri Jyoti Basu's arrest, on 5th March, 1954, Shri Bankim Mukherji raised the above point of privilege. I am at present asked to decide whether the arrest under the Preventive Detention Act of an honourable member is a breach of privilege of this House and should be referred to the Committee of Privileges. We have a written Constitution and there the powers, privileges and immunities of members and of the House have been provided for under Article 194, clause (3) of the Constitution of India. The powers, privileges and immunities of a House of Legislature of a State and of the members and the Committees of a House of such Legislature shall be such as may from time to time be defined by the Legislature by law, and until so defined shall be those of the House of Commons of the Parliament of the United Kingdom, and of its Members and Committees, at the commencement of the Constitution. There is analogous provision under Article 105 with regard to the Parliament of the Union and its members. No law has yet been passed either by this Legislature or by Parliament defining the scope and extent of such powers, privileges and immunities, and in the absence

of such legislation we have to be guided in this respect strictly by the provisions of Article 194. That means, for any question of powers, privileges and immunities we have to be guided by the powers, privileges and immunities of the House of Commons of the Parliament of the United Kingdom. I have therefore to consider whether the breach of privileges alleged in this case falls within the breach of privilege recognised in the House of Commons; in other words, it has to be considered whether under the privileges and immunities of the House of Commons a member has immunity from arrest under an Act of the nature of the Preventive Detention Act.

Tracing from ancient times as far back as the 17th century, it was a well-established convention of the House of Commons that by laws and usage of Parliament, privileges of Parliament belong to every member of the House of Commons in all cases except treason, felony and breach of peace. Originally it was only to cases of treason, felony and breach of peace that privilege was expressly held not to apply. Originally the classification might have been regarded as sufficiently comprehensive, but gradually the distinction between civil and criminal was clearly established, and no protection was afforded by privilege in criminal offences. But in the case of misdemeanour in the growing list of statutory offences and particularly, in the case preventive detention under emergency legislation in times of crisis there was a debatable reason about which neither House had until recently expressed a definite view. Gradually in the 19th century it was provided by the Protection of Person and Property Act of 1891 that if any member of either House was arrested, the fact should be communicated to the House of which he was a member, and since then it has always been a special privilege of the House to receive communication of the cause of commitment of a member immediately after his arrest. The latest decision after reviewing various parliamentary decisions on the question of privilege was in 1939 in the case of Captain Ramsay where the Committee of Privileges of the House of Commons declared the law as follows: "The precedents lend no support to the view that Members of Parliament are exempted by privilege of Parliament from detention under Regulation 18B of the Defence (General) Regulations, 1939. Preventive arrests under statutory authority by executive order is not within the principle of the case to which the privilege from arrest has been decided to extend. To claim that the privilege extended to such cases would be either the assertion of a new parliamentary privilege or unjustified extension of an existing privilege."

The question for me, therefore, is to consider whether in view of the above decision the arrest under the Preventive Detention Act, 1950, framed under the statutory provisions of our Constitution is applicable to the principles of Captain Ramsay's case; in other words, this Act is of the same nature of legislation as Regulation 18B of the Defence (General) Regulations, 1939, of England. A similar question was raised in two cases in this country; one during the pre-war Legislative Assembly of Bengal during the Speaker Azizul Haque's time, and one under this Constitution in the House of the People in the case known as the Despandey case. In the Bengal Legislative Assembly the Committee of Privileges went into the question which arose in connection with the arrest and detention of Shri Bankim Mukherji under old Regulations of detention without trial, and the Committee made the following recommendations:—

"The fact of the arrest, conviction or detention of a member on a criminal charge or otherwise together with the charge against him should be forthwith communicated to the Speaker."

The Privilege Committee never reported that such detention without trial was a breach of privilege.

Speaker Azizul Haque ruled that when a member was arrested or detained the fact of his arrest or detention should be immediately communicated to the Speaker.

After the passing of our Constitution in accordance with the recognised practice and privileges of the House of Commons the Central Ministry of the Home Affairs, New Delhi, issued a circular to all State Governments on the subject of arrest and detention of the members of the Legislature for communication to all Judges, Magistrates and Executive Authority with regard to the necessity of immediate communication of the fact of arrest and detention to the Speakers of the respective Legislatures and drawing attention to the question of privilege in a prescribed form of communication to be addressed to the Speakers. In the four cases referred to I duly received such communications shortly after arrest which was forthwith placed before the House by way of messages. The specific question as to whether arrest under Preventive Detention Act, 1950, constitutes a breach of privilege, was recently considered by the Committee of Privileges of the House of the People in the Despandey's case and the Committee by a majority came to the finding that no breach of privilege is involved if preventive arrest under statutory authority by the executive order is made.

But to my mind, it appears, there are other aspects of the question which require very careful and mature consideration in view of the very early stage of democratic conventions that we are building up in this vast country. What is the legal or constitutional consequence of the information to the Speaker of the fact of detention of a member during the session and of information by the Speaker to the House about such arrest? Such an importance has been placed on this fact of information that failure to furnish within the shortest possible time has been held to be a breach of privilege of the House. If a particular act of Executive in arresting a person under a warrant of a criminal charge is not a breach of privilege, the failure to send the information to the Speaker for information to the House has been held to be a breach of privilege when the House is in session. There are various historical reasons for the growth of this convention which leads to the conclusion, to my mind, that the House is the supreme authority for deciding whether a member should be asked to discharge his parliamentary duties only during the sitting hours of the session, if the House thinks that the attendance of such member is essential irrespective of the fact of such arrest. In the House of Commons no doubt there was no occasion for the House as a whole to exercise such authority as it has always proceeded on the well-established principle that "privilege of Parliament in regard to the service of the Commonwealth is not to be used in the danger of the Commonwealth". In our country, which is trying to establish sound democratic principles in the midst of variety of elements, we have to guard against the possibilities of encroachment upon parliamentary privileges from many quarters. In some of the European countries which has a democratic constitution, privilege from immunity of arrest also extends to certain kinds of criminal offences, but we are not concerned with the constitutional provisions of other European Legislatures. We have to consider that although there is no immunity from arrest under the Preventive Detention Act under an emergency legislation in England, whether a distinction can be drawn between such cases and cases of preventive detention under ordinary law as to whether the House should exercise its rights of parliamentary privilege only with

regard to the attendance of members during sitting hours if it thinks that the presence of such members is absolutely essential for the discharge of parliamentary responsibilities.

There is also another aspect to be considered whether the Preventive Detention Act, 1950, can be distinguished from the Emergency Legislation in Ramsay's case in the House of Commons, which was a wartime emergency legislation. In our Constitution there is provision for emergency in Part XVIII of the Constitution, Preventive Detention Act is a legislation not under such emergency but under Article 22 in the Chapter on Fundamental Rights. As Legislatures are sovereign so far as powers, privileges and immunities of its members, Deshpandey's case in the House of the People may not necessarily be binding on State Legislatures. That is also a matter for consideration whether convention should grow in this country as to the powers, privileges and immunities of the House of the People being binding on State Legislature. As this is the first case of its kind in this Legislature after the new Constitution, I think, I should give an opportunity to the Privilege Committee of this House to consider the matter in all its aspects. I therefore refer the matter to the Committee of Privileges of this House.'

(Loud applause from the Opposition Benches.)

Proceedings, dated 20th March, 1954. Vol. IX, No. 2, pp. 1582-88.

Ruling as to whether a resolution subject-matter of which is not primarily the concern of the State of West Bengal is admissible

'Mr. Speaker: I agree with Mr. Mukherjee that it is a very serious matter. We are creating traditions and conventions. In the points that have been raised by Sjs. Bankim Mukherji and Subodh Banerji, an analogy has been given about three previous resolutions by Sj. Subodh Banerji on the subject of allowing a discussion on the Central Drugs Laboratory. I want to point out to Sj. Subodh Banerjee that that subject is in the Concurrent List—drugs and poisons. That is, it is a subject of the State. Therefore that resolution was allowed to be discussed according to the provisions of the Constitution.

Another resolution has been mentioned by Sj. Bankim Mukherji about Farakka Barrage on Ganga—because we were asking the Central Government and the Planning Commission for action, therefore it should not have been discussed—that has been mentioned by Sj. Bankim Mukherji. I want to invite the attention of Sj. Bankim Mukherji to item No. 13 of the State List in the Constitution—"Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I". Therefore, the Farrakka Barrage resolution clearly comes within the competence of the State Legislature.

Another resolution has been mentioned by Sj. Bankim Mukherji regarding the death of Dr. Syamaprasad Mookerjee as if we were asking the Central Government to make an enquiry into an affair in Kashmir—a foreign State. There I would invite the attention of Sj. Bankim Mukherji to item No. 45 of the Concurrent List—"Inquiries and statistics for the purposes of any of the matters specified in List II or List III." The death of a member of the West Bengal Legislature happening under tragic circumstances—if an enquiry is requested to be made by the Central Government into it, it comes under the Concurrent List.

Dr. Kanailal Bhattacharya: Was he then a member of the West Bengal Legislative Assembly?

Mr. Speaker: He was an ex-member of the West Bengal Legislative Assembly and a Member of Parliament from West Bengal.

These are the resolutions which have been mentioned. To draw an analogy therefrom and to say that, therefore, this resolution—on the analogy of those resolutions—should have been allowed is not a logical argument.

Then comes the point raised by Sj. Subodh Banerjee about being concerned with the reaction of the people of West Bengal. Reaction is a matter to be considered in framing and considering a non-official resolution. Reaction of the people of West Bengal may happen on numerous matters, but the Legislature and the Constitution have provided for remedying those reactions by appropriate methods—some to be taken by the State Government and some to be taken by the Central Government. It is not that the people of West Bengal are left without remedy in any serious reaction in any matter under the sun. The Constitution has thought of it and provided all possible remedies. The question is the forum and how to do it. There I think we must very seriously treat our Constitution. So far as the non-official resolution is concerned, therefore, what we have got to see is whether it is primarily the concern of the Government of the State. In making this argument—when I allowed honourable members to talk on the question of admissibility of the motion—of course, some members have transgressed the limits of admissibility and spoken on the merits—and I have entire sympathy with them about the merits of the question—I believe the purpose of the resolution, the purpose of the mover has been amply served by allowing a very long discussion on the question of admissibility. But what I am concerned with is to see whether I should differ from the decision previously given.

Now, let me turn to the language of the resolution. Whatever you may say the language is clear and specific. If you paraphrase the resolution, the first part is "that the military aid being given by the Government of U.S.A. to Pakistan." That is a matter which clearly comes under the Union List—"Foreign Affairs; all matters which bring the Union into relation with any foreign country". Pakistan is a foreign country. U.S.A. is a foreign country. Any relation with them is a matter which cannot be discussed by the State Legislature. The second part of the resolution "brings the cold war". War and peace is item No. 15 of the Union List. Next comes foreign jurisdiction—item No. 16 of the Union List. Then we come to our reaction—we must ask the Central Government for ample provision for defence. About defence, defence of India and every part thereof is in the Union List—West Bengal being a part of India the defence of West Bengal is a concern of the Central Government. To enable me to consider the provisions of this rule, the language is not the concern of the State—not the concern of the people of West Bengal. The language is the concern of the Government of the State. The concern of the State means the concern of the people—they may be mentally or morally concerned. The question is whether the West Bengal Government here on the floor of the House have got any papers, any officer, any department, any facts to prove what is the aid, what are the terms of the agreement between Pakistan and U.S.A. What are the steps that West Bengal contemplates to be taken in the event of a cold war? Can the Chief Minister of West Bengal be consulted by the Prime Minister of India in the matter of defending West Bengal when the time of war comes? That is—

Sj. Jyoti Basu: Have we to write that?

Mr. Speaker: That is the inference. To enable me to consider what is the primary concern of the Government of the State, the only things which I can rely on are the three Lists, because the Constitution has provided amply for the various matters that come up for consideration of the House. Therefore, when I gave my very considered ruling on that point, I said that India has got a very unique and peculiar Constitution. The identical people who are assembled in this House—the identical voters simultaneously voting have sent 34 representatives to the House of the People to represent their case. You will not find this unique Constitution anywhere else in the world. Therefore, West Bengal's reaction and danger are, under our Constitution, amply safeguarded and protected at the Central Legislature by agitating there. I am concerned to see whether I should not strictly follow the Constitution and the ruling that I have given should stand. I cannot allow a subject to be discussed which comes under Foreign Affairs, Defence and War.

In that view of the matter I hold that the resolution is not admissible and I stick to my ruling already given.'

Proceedings, dated 6th April, 1954. Vol. IX, No. 3, pp. 964-68.

Resolution under Proviso to Article 368 of the Constitution of India, amendment to—whether permissible

'Mr. Speaker: With regard to the two amendments of Shri Tarapada Bandyopadhyay and Shri Ganesh Ghose, amendments Nos. 1 and 3, these I disposed of as out of order on an entirely different ground from the ground of the amendment of Shri Subodh Banerjee. The amendments of Shri Tarapada Bandyopadhyay and Shri Ganesh Ghosh really want something to be done in this Bill. The amendment of Shri Tarapada Bandyopadhyay wants that the Bill be circulated. There is no Bill before House. The Bill has been passed by both Houses of Parliament. So this House is not considering any Bill at all. There is no provision for that in the Constitution. Therefore, on that ground it is out of order. Similarly, the amendment of Shri Ganesh Ghosh also wants that the Seventh Schedule of the Constitution will have effect only for five years from the 26th January, 1955. That also is really an amendment to the Bill that has been passed amending the Schedule. What should be now the form of the Seventh Schedule after the Constitution (Third Amendment) Bill has been passed by both Houses of Parliament is there. Therefore, this House also has no scope for making amendments to the Bill that has already been passed. Therefore, on those grounds I hold these motions are out of order.

With regard to the motion of Shri Subodh Banerjee, I have considered it from another point of view. Firstly, one of the main arguments of Mr. Banerjee was that since it is a resolution—and the resolutions under the rules are governed by Part VI of the Assembly Procedure Rules—there is scope for amendment. Similarly, as he himself has pointed out, so far as the Appropriation Bill is concerned, there is no scope of amendment rightly because the provision in the Statute is such that there is no scope for amendment to an Appropriation Bill. Similarly, when this resolution by Dr. Roy is before the House the language clearly follows the proviso to Article 368 of the Constitution. The proviso distinctly lays down what the functions of the Legislature are. Here the stage has been reached after the Bill has been passed by both Houses of Parliament to the effect that this proviso has to be acted upon by all the State Legislatures to enable the President simply to give his assent to the Bill.

The Hon'ble Dr. Bidhan Chandra Roy: May I point out that the Act says "making provision for such amendment before such amendment is presented to the President". In order to present the amendment to the President this resolution is necessary.

Mr. Speaker: That is what I say. The amendment means the Constitution amendment which is now in the form of a Bill. Now, before the President gives assent to the Constitution (Third Amendment) Bill he has got to be satisfied as to the number of States that have ratified the Bill and the number of States that have not ratified. The language is very clear. "By resolution to that effect" means to be ratified. Therefore, Mr. Banerjee's argument and another aspect which Mr. Basu has said, there is a substantial point in that. The question is that if a sentimental word is expressed or regret is expressed, then as I have said there is no scope of sentiment of joy or regret. What will be the effect of the resolution? The effect of the resolution will be either a qualified assent or unqualified assent. The President is not concerned with qualified assent or unqualified assent. H is concerned with whether more than half of the States have given their assent. There is that danger. If the West Bengal Assembly passes a resolution giving a qualified assent that may have the effect of the President altogether ignoring it simply because it is not in terms of the resolution.

In that view of the matter I think I shall give my considered ruling in this way. I have considered the amendment tabled by Sj. Subodh Banerjee and I am of opinion that it is out of order. The motion of Dr. Bidhan Chandra Roy is to the effect that the House ratifies the amendment of the Constitution proposed by the Constitution (Third Amendment) Bill. Now, this Bill has been passed by the two Houses of Parliament and has to be ratified by the Legislature of not less than one-half of Parts A and B States before it can be presented to the President for his assent. The scope of the motion is therefore either to ratify or not to ratify the Bill. Although theoretically the text of the motion may be changed by the House, in fact there is no scope for any amendment to the text of the motion which is before the House. The House may ratify or refuse to ratify the Bill. The addition of the words "with regret" will not be within the scope of the motion which is before the House; the decision and not the sentiment of the House should be taken on a motion. What the motion before the House seeks to do is to ascertain whether the House would do so cheerfully or with regret. There is no scope for any qualified ratification. If any member is sorry that any amendment should be made to the Constitution, he can express his sentiment in his speech and vote against the motion. What is desired is his opinion and not the state of his mind in coming to the opinion. Sj. Subodh Banerjee does not, it appears, object to the ratification. If that be so, it is immaterial for the purpose of the decision of the House whether he does so gladly or with regret or under compulsion. In that view of the matter, I rule that this amendment is not within the scope of the motion and is therefore out of order. But he can certainly express his view in a speech as to why he has brought in such a motion.'

Proceedings, dated 17th February, 1955. Vol. XI, No. 1, pp. 407-409.

Appointment of a Committee for revision of Rules of Procedure and Ruling by Mr. Speaker as to whether or not the name or financial position of a Constituent of State Financial Corporation could be disclosed

'Mr. Speaker: Before the next item is taken up I have to announce my decision on two points which I withheld on previous occasion for consideration. The first question relates to the revision of rules of this Assembly. Honourable members are aware that both during the previous session as well as in this session the question was raised about the revision of rules. A motion was tabled by Sj. Bankim Mukherji for a non-official day in which he spoke about the revision of rules. That motion of course was technically out of order but the Leader of the House in this session has expressed the desire that Government also wants that the rules should be revised. My personal opinion is that the rules of procedure of this House should be revised. In that view of the matter I announce that a committee consisting of the following members be appointed to consider the workability of the rules of procedure of the House and submit their report by the 30th of December next:—

(1) Sj. Jyoti Basu, M.L.A.,
(2) Sj. Bankim Mukherji, M.L.A.,
(3) Sj. Sudhir Chandra Ray Chaudhuri, M.L.A.,
(4) Sj. Jnanendra Kumar Chaudhury, M.L.A.,
(5) The Hon'ble Satyendra Kumar Basu, M.L.A.,
(6) Sj. Satindra Nath Basu, M.L.A.,
(7) Sj. Koustuv Kanti Karan, M.L.A.,
(8) The Hon'ble Jadabendra Nath Panja, M.L.A.,
(9) Sj. Bankim Chandra Kar, M.L.A.,
(10) Sj. Sankar Prasad Mitra, M.L.A.,
(11) Sj. Ananda Gopal Mukherjee, M.L.A.,
(12) Dr. Kanailal Bhattacharya, M.L.A., and
(13) Sj. Ashutosh Mallick, M.L.A., Deputy Speaker, will act as the Chairman of the Committee.

The other point on which I reserved my ruling is this:

In answer to a starred question by Shri Suhrid Kumar Mullick Chowdhury regarding West Bengal Financial Corporation certain informations were given by the Chief Minister and Minister for Commerce and Industry, Dr. Bidhan Chandra Roy. In reply to the question about authorised capital of each industry and who have received loans, it was stated that the information cannot be furnished according to established banking practice and convention.

A point of privilege was raised by Shri Jyoti Basu as to whether in refusing to give those informations under the cover of banking practice and convention a breach of privilege of the House has been committed. The question is undoubtedly of great importance and I have given my most anxious consideration to the matter. The West Bengal Financial Corporation is a financial corporation formed under the Central Act known as the State Financial Corporation Act, 1951. Section 24 of the Act defines the general power of the Board of Directors where it is stated that the Board in discharging its functions under this Act shall act on business principles, due regard being had to the interests of industry, commerce and the

general public. Section 25 defines the various businesses which the Financial Corporation may transact. The definition of "banking" is contained in the Banking Companies Act, 1949. Read with section 5(b) of the Banking Companies Act, 1949, the business of the Financial Corporation clearly falls under the category of banking business. Further under section 44 of the Act, it is provided that the Financial Corporation shall be deemed to be a bank for the purposes of Bankers Books Evidence Act, 1891. That means that even the judiciary has not the power, as in all ordinary cases, to call for any record of the Corporation, except under special circumstances as provided under the Bankers Books Evidence Act.

From the statement of objects and reasons of the State Financial Corporation Act, as also from the general body of the Act, it is clear that the object of the Statute is to finance medium and small scale industries and consider only such cases as are outside the scope of Industrial Financial Corporation, which is only confined to loans to public undertakings. Whereas the Industrial Finance Corporation Act can provide medium and long term credit to industrial undertakings of a public nature, the States Financial Corporation Act has power to help proprietory firms and partnership concerns too. Under section 40 of the Act every Director, Auditor, Officer or any other employee of the Financial Corporation, before entering upon his duty, will have to make a declaration of fidelity and secrecy in the form set out in the schedule to the Act.

In that view of the matter I have to consider what are the provisions of the Banking Law and conventions as between the bank and its constituents. It has been a recognised practice and well settled principle "that the banker must not disclose the condition of his customer's account, except on reasonable and proper occasions". The question, therefore, whether the name or financial position of a constituent of the State Financial Corporation should be disclosed in answer to a question before the Legislature is certainly a question of propriety and whether such propriety should be exercised against members of the Legislature and whether that secrecy should be made applicable in the case of the Legislature of a State. But if the Government thinks that in the public interest they should not disclose, there ends the matter and this statement would bind the Legislature. Further it is a salutary principle that banking transactions with banks' constituents should not be disclosed in public interest particularly when the object of the State Financial Corporation is to promote and develop small scale and medium industries by providing loans to constituents. The whole purpose behind this time-honoured banking principle and convention is that the disclosure affects the customer's credit in the market and if any disclosure in the opinion of the Board of Directors may have the effect of scaring away the customers by reason of their credit being injured, they are quite within the four corners of law to withhold such disclosure from the public. In this particular case I find that the amounts of loan have been disclosed and nature of industries has been also disclosed, and if the names of the loanees and their financial position have not been disclosed, the non-disclosure has been prompted by public interest and under the four corners of a Statute and long established banking practice. From that point of view I do not think any question of breach of privilege arises at all in this case particularly in answer to questions.'

Proceedings, dated 30th August, 1955. Vol. XII, No. 2, pp. 13-15.

Further ruling on the point as to whether the Government can withhold certain information with regard to the State Industrial Finance Corporation

Mr. Speaker: Before I go on to the next item on the agenda, I shall deliver my ruling which I reserved on the point raised by Sj. Jyoti Basu the other day.

On the 30th August, 1955, I gave a considered ruling on the point of privilege raised by Sj. Jyoti Basu on the question of withholding certain information by the Finance Minister in answer to certain supplementary questions with regard to the State Industrial Finance Corporation. Since then Shri Basu has again raised the point and invited my attention to a report of the Industrial Finance Corporation of India published and circulated to Members of Parliament in which the names and amounts of loans granted by the Industrial Finance Corporation have been published. Shri Basu was also good enough to hand over to me for my perusal and consideration the Sixth Annual Report of the Industrial Finance Corporation of India. In the Sixth Annual Report I find that it has elaborately dealt with the report of an enquiry committee appointed by the Government of India to enquire into certain criticisms about the working of the Corporation made in both Houses of Parliament. The report published in extenso the full and complete and very exhaustive decision of the Government of India in the Ministry of Finance being the action taken on the report of the Industrial Finance Corporation Enquiry Committee. In that exhaustive resolution of the Government of India which was published in the "Gazette of India" it was inter alia stated "that Government have also decided to direct the Corporation to publish the names of borrowing concerns to whom loans have been sanctioned". In pursuance of that sanction in the Sixth Annual Report in Appendix "D" for the first time there is a full list of the statement of loans sanctioned by the Industrial Finance Corporation of India to different companies since its inception, from the 1st July, 1948 to the 30th June, 1954. It appears that in the Lok Sabha too the Government in the first instance decided to withhold the information about the names and the amount of loans. In connection with the discussions of the Industrial Finance Corporation (Amendment) Bill, 1952, after these disclosures were withheld during the questions, the Prime Minister of India stated on the floor of the House that these particulars should not be withheld from the Members. The Prime Minister was justified in making the statement because under the Indian Companies Act certain affairs of public companies are matters of public knowledge and particularly under section 109 of the Indian Companies Act a mortgage or charge by a public company or any of its undertakings or floating assets has immediately to be registered before the Registrar of Companies and the public are entitled to have inspection thereof on payment of requisite searching fees.

Therefore what under the provisions of a law the public are entitled to know should not have been withheld from the Members of the Legislature. The Central Industrial Finance Corporation Act deals only with public companies whereas the State Financial Corporation Act has been empowered to deal with private companies as also partnership concerns and individual proprietorship firms. I find with greatest diligence no law by which public may have access to affairs of such private concerns. Therefore applying the principles of Indian Companies Act by which the State Financial Corporation Act is governed, I gave the aforementioned ruling on the 30th August, 1955, and I do not see any justification for revising my previous ruling.

But I may request the Finance Minister to consider the report of the Industrial Finance Corporation Enquiry Committee as also the elaborate resolution of the Ministry of Finance, Government of India, dated the 23rd December, 1953, on the subject, and to consider whether so far as the information of names is concerned the State Government cannot fall in line with the Central Government also so far as these two particular information are concerned. As I feel that although the principles of the Banking Law applies to all the constituents of the State Industrial Finance Corporation, who take loans, viz., public companies, private companies, partnership concerns and individual proprietorship firms and if following the provisions of Indian Companies Act the names of public companies and the amounts of their loans are disclosed whether it would be impolitic to disclose before the legislators the names of other categories of its constituents. But as the law now stands I find that I cannot by my ruling ask the Government to disclose those informations as the present position under the Banking Law stands.'

Proceedings, dated 23rd September, 1955. Vol. XII, No. 3, pp. 474-75.

Ruling as to whether introduction of the West Bengal Taxes on Entry of Goods in Local Areas Bill,, 1955, militates against the provisions of Articles 19(1)(g), 304(b), and 303(1) of the Constitution

'Mr. Speaker: This is certainly a very important point of order that has been raised and I had the pleasure of hearing very able arguments on both sides. The points raised by Shri Haripada Chatterjee boil down to two; first, it hits Article 19(1)(g) of the Constitution—Fundamental Rights; secondly, it hits Article 304(b) and as such requires the previous sanction of the President. Shri Subodh Banerjee urged three points. The first point is the same as Mr. Chatterjee's that it is an Act under Article 304(b), therefore, the President's prior permission is necessary. His second point is that it is a discriminatory legislation under Article 303(1); therefore, the State has no power to introduce such legislation. His third point is it is an Act under Item 52 of the Union List and as such legislation relating to inter-State trade. Therefore, the State Legislature is not competent to bring in this legislation. I have very carefully listened to the arguments of the Opposition members and of the Chief Minister on the point. On this question I have on previous occasions several times held that so far as the Chair is concerned, he has only to see whether prima facie the Bill is introducible. If there are controversial questions of law, such as affecting the fundamental rights, affecting the provisions of different legislative powers of the Union and the States and various other matters, that is a matter for the judiciary to consider and in our Constitution judiciary has been given the very widest power to set aside any law passed whether by the Lok Sabha or by any State Legislature. It is not the function of the Chair to decide such questions of legal interpretation if he is satisfied that prima facie Government has the power to introduce such legislation. Now, I shall deal with the points raised one by one.

The Bill certainly falls within Item No. 52 of the State List. Whether that item contemplates local taxes such as octroi duty about which reference has been made by my friend Mr. Chatterjee when he quoted from the Taxation Enquiry Commission's Report, I may say that as a matter of fact the Taxation Enquiry Commission's Report has encouraged the State Legislatures and the Union to impose octroi duties in future for the benefit and development of the respective States, and I believe for that purpose in the Statement of Objects and Reasons of this Bill it is stated that this Bill

has been brought to secure revenue for financing various development projects. I do think that this is in conformity with the recommendation of the Taxation Enquiry Commission. The Bill, therefore, clearly falls under Item No. 52 of the State List. It is a Bill to levy a tax on the entry of goods as stated in Item 52.

Now comes the question whether it is under Article 304(a) or 304(b). The language is quite clear. The Constitution has given the State Legislature power to restrict trade and commerce under Articles 304(a) and 304(b). It is contemplated clearly in unequivocal language in both sub-sections about two categories. Firstly, in (a) it is an imposition of tax on goods imported from other States, any tax to which similar goods manufactured or produced in that State are subject, so as not to discriminate between goods so imported and goods so manufactured or produced; secondly, in (b) it is an imposition of such reasonable restrictions on the freedom of trade, etc. Therefore, as regards Mr. Chatterjee's point, it in no way affects the fundamental rights. I may refer him also to Fundamental Rights—Article 19(6). There clause (6) gives the Legislature power to restrict trade in the interests of the country and the States. Clause (6) of Article 19 states "Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause." I think Sj. Subodh Banerjee differs from Sj. Chatterjee's view in this matter. Therefore, as I was saying, the Constitution has given power to the State Legislature to pass laws imposing restrictions on trade. The question now boils down to this: whether—and this is the next point of Sj. Subodh Banerjee —this amounts to restrictions on trade. Now, on this point I must say that if it had been an Act under Article 304(b), certainly President's previous sanction would have been necessary. But if it is a legislation under Article 304(a), the Constitution does not impose that obligation on the Treasury Bench to get the prior sanction of the President. Therefore, the question now is with regard to the interpretation of the various provisions of the Bill. Supposing I concede the point of Mr. Subodh Banerjee that clause 6 or clause 12 of the Bill may be construed to impose certain restrictions, what does that matter? The Chair is not going to interpret the provisions of the Bill. As a matter of fact, when Mr. Chatterjee referred to different American cases, I may also point out to him that there is a Patna High Court case whether it was held—it was Atmaram Case—that the imposition of tax is never a restriction on trade. Therefore, I may say that there are conflicting views. Even when the Courts held conflicting views as to whether imposition of tax is restriction on trade or not, it is not the function of the Chair to go into that question at all as to whether he should decide by giving a ruling on this point. He has referred to a Supreme Court case. I have thoroughly gone into that case. It is absolutely beside the point, because it is a case which decides that imposition of a licence fee is something different from imposition of tax, and licence fee under the circumstances in which this municipality at U.P. under the Municipal Act so levied may be construed as restriction on the movement of trade. That case does not apply to the point he has raised. So far as decision on this point is concerned, that case is not at all helpful.

It may be argued from one side that sections 6 and 12 seek to impose restriction on trade, but the other side may contend that the method of realisation of tax, the procedure of realisation of tax cannot be construed as imposition of restriction on trade. There are both sides of the picture. Here the Chair is not competent to go into this question. So that disposes of Mr. Subodh Banerjee's point. I have already pointed out that so far

as discriminatory legislation is concerned, in this Bill I do not find any provision where discrimination has been made between one kind of goods and another, between Darjeeling orange, for instance, and Shillong orange or Nagpur orange. You may be right, but that is for the court to decide.

So far as inter-State trade is concerned I do not clearly agree with Sj. Subodh Banerjee. It is not a legislation to carry on inter-State trade at all. It is a legislation simply to levy a tax under Article 304(a) on entry of goods in certain notified areas.

The next point raised by Sj. Ganesh Ghosh is with regard to Article 263. I have just now seen the Essential Goods Act. Certain other Acts were referred to. I think the reason why in those cases President's consent was obtained is that those Acts applied to essential goods. If it has been a question of essential goods certainly not obtaining the prior sanction of the President would have been a very vital defect. So far as this Bill is concerned it is not intended to levy tax on any essential goods.

The last point is that even assuming everything argued by Opposition as correct, I would refer the honourable members to Article 255 of the Constitution which clearly lays down that no Act of Parliament or of the Legislature of a State specified in Part A or Part B of the First Schedule and no provision in any such Act shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given subsequently. Supposing today after this Bill is passed Dr. Roy is advised to get the assent of the President and he gets it, why should I shut out this Legislature from considering this legislation? In that view of the matter I hold that the Bill should be proceeded with.'

Proceedings, dated 30th August, 1955. Vol. XII, No. 2, pp. 29-31.

Ruling as to whether amendments are admissible on the States Reorganisation Commission Report

'Mr. Speaker: Before further discussion proceeds I think I ought not to keep the House in suspense so far as amendments are concerned and I would give my decision thereon.

I have received a number of amendments some of which overlap each other. They have been circulated subject to admissibility. I have given anxious consideration as to whether these are strictly within the scope of the resolution before the House. What is the scope of the resolution? The first part is discussion on the consideration of the report by a Commission appointed by Central Government who were directed to report within certain terms of reference to make certain recommendations with regard to reorganisation of States of India. The main scope of the resolution, therefore, is fullest discussion of the report as a whole and not decision on any specific issues or on any particular aspect of the report as there is no definite proposal on the subject before the House. The Chief Minister in introducing the motion has explained the circumstances under which the House has been called to discuss on the matter—the main object being to hold a preliminary consultation of all viewpoints to enable the Government to formulate proposals to the Central Government for drafting a Bill on State Reorganisation. The second part or operative part of the resolution is recommendatory and only recommendation on which the verdict of the House is sought is that entire proceedings be forwarded to the Central Government.

I am therefore concerned to see whether any amendment has the effect of limiting or narrowing down the scope of the discussion to a specific issue. Each amendment that has been tabled seeks the verdict of the House also on a specific issue as every amendment is a motion on which question has to be put by the Speaker and verdict obtained. The honourable members, I hope, would appreciate that decision on specific separate amendments at this stage is premature and outside the scope of this resolution as there is no proposal before the House to which amendments of the nature sought for can arise. There should be largest possible expression of views and not a few decisions on specific issues arising out of the amendments.

There is also another aspect of the question. May I draw the attention of the House to Article 3 of the Constitution? It is at that stage when the draft reorganisation proposal and the Bill for readjustment of boundaries is placed before the House for consideration that these sorts of amendments will be thoroughly relevant and fully within the scope of the motion for consideration by the House. It is not my purpose to advise members as to the propriety of their action in tabling amendments.

In this connection I have to draw the attention of the House to rule 43 which says amendments must be relevant—not only relevant but within the scope of the question to which it is proposed. All that I am concerned with is to see whether amendments at this stage as suggested are beyond the scope of the main resolution before the House and serves the purpose for which this discussion has been arranged. The proper scope for a decision of the House on such specific amendments, therefore, will be at the time at a subsequent stage when the State Reorganisation Bill will come up before the House in the form of a Draft Bill under Article 3. At that stage discussion will be narrowed down to the provisions of the Bill. At the present stage discussion is unrestricted, wide and diversified in its scope and can even go beyond the report.

Each of the honourable members who have tabled amendments can certainly speak and argue on the lines of their proposals and even incorporate the exact language of their amendments in the speech. No decision at this stage is called for except expression of wide and diversified views. None of the amendments would therefore be admissible at this stage as there is no proposal to which they can be relevant.

I may for the information of members state that there is an exact precedent in this House when the draft Constitution was considered by the West Bengal Assembly in 1948. During the first few days of debate the House discussed an exactly similar resolution to which no amendments were allowed to be moved. But when subsequently in the same session the Draft Constitution Bill was considered, amendments were moved to its various clauses. That is a very sound precedent from which I should not like to deviate.

I can assure the House, however, that inadmissibility of amendments would not in any way affect the fullest expression of all viewpoints to be recorded and forwarded to the Central Legislature.'

Proceedings, dated 6th December, 1955, Vol. XIII, pp. 75-77.

Observations on the right of Speaker to expunge unparliamentary expressions

Mr. Speaker: This question of expunction I put before this session's Conference of Presiding Officers on behalf of West Bengal, and I am reading before the House the resolution which I tabled and moved in the All-India Body of Speakers' Conference differing from the rules of Lok Sabha about which Shri Bankim Mukherjee pointed out. I entirely disagreed from the rules framed by the Lok Sabha and the Rajya Sabha on this matter and, as a matter of fact, my whole argument was based on that as we wanted to create and gradually grow a healthy convention. My motion was this: "(a) whether any portion of a member's speech or utterance in the House can or should be expunged from the official records of the proceedings of the House; (b) whether the question is not capable of being answered in such general terms—whether any portion of a member's speech or utterance declared to be unparliamentary by the Presiding Officer can or should be expunged from the official records; (c) the answer being in the affirmative what is the authority to direct the expunction, whether it is the entire House or the Presiding Officer; (d) if it is the House should there be a formal motion before the House for expunction? If it is the Presiding Officer has he any inherent power to direct expunction; (e) is he to be authorised by the rules of procedure of the House; (f) when and if expunction is ordered, what should be the procedure followed; (g) whether they should remain in the manuscript records but omitted from the printed and published proceedings: whether the matter ordered to be expunged should be erased or removed from the record?" As has been pointed out every member of the Opposition has agreed that there is yet no uniformity of procedure in different legislatures of India and in the House of Commons, nor is there yet any uniform set of rules of legislatures on this point. On the question of the rules of this House the honourable members will be pleased to remember that I had, on previous occasions, requested them that the rules required revision and, as a matter of fact, in the last session of the Assembly I appointed a Committee to revise the rules of this House, and it was my initiative which I have been making for the last four years. The rules of procedure of this House require revision. You have known that the Rules Committee had several sittings. They submitted a preliminary report, and the matter that was raised by Shri Haripada Chatterjee was there in that preliminary report. I would have been extremely grateful if the members would have taken up and completed the report before the life of this first term of the House was out, so that the new Assembly would have started with a new set of rules thoroughly considered. And, as a matter of fact, before that Rules Committee it was my view also that the rules of expunction of procedure of this House would also require revision about which I agree with the views of the Opposition, but the rules, as I have indicated, do not show any clear direction. That is the position. There is not yet before the House any rule giving a clear direction as to what matter should be expunged or not.

There is another aspect of the matter. Expunging, as is settled not only by the House of Commons but all the Houses of Legislature, falls under different categories. Unparliamentary expression is an entirely different thing from an expression which is vulgar, obscene and unprintable. Secondly, apart from the unparliamentary expression of which expunction is considered by many legislatures in different lines according to the different decisions of the Speakers of different Houses, so far as other expressions are concerned, such as reflections on the conduct of a member, fellow member or on the conduct of the Ministry or on the conduct of an outsider or on the conduct of an officer of the Government—they also stand in a different category.

These different categories are unanimously accepted by all different democratic legislatures. Therefore, expunging of proceedings of record falls under three categories. It is unanimously accepted by the House of Commons and by all civilised legislatures of the world that the first category is unparliamentary expression which is entirely different from obscene, vulgar and unprintable expression. The second category is "reflection" and the third one is indecent, unprintable and vulgar expressions. Now so far as the question of the power of the Speaker is concerned, I entirely agree with the views of the Opposition that the Speaker should not take upon himself the responsibility of expunging records, such as unparliamentary expressions and even reflections on the Speaker, but the House should be the ultimate authority and on that point the decision of the House of Commons is quite clear. The decision of the House means that when the Speaker states before the House that I order this to be expunged, it means with the entire approval of the House. He does not expunge secretly in his chamber while revising the proceedings. That is also one of the methods adopted by the different legislatures. As a matter of fact, the Lok Sabha rules authorise the Speaker and the Rajya Sabha the Chairman, to use discretion to expunge, while revising the draft proceedings, any unparliamentary expression. As a matter of fact, in India it has been done in several legislatures during the last five years but I have refused to expunge any unparliamentary expression secretly in my chamber without bringing it to the notice of the House. In my experience during the last four years I had no occasion to expunge any unparliamentary expressions or reflections on any member secretly without the knowledge of the House. During the last 150 years the House of Commons had not a single occasion when any member used any obscene, vulgar and unprintable and unparliamentary expression. The democracy has so advanced and the convention has so much developed there that they had no occasion like this. The difficulty is that in India we cannot stand in comparison with the traditions and conventions followed in the House of Commons. Moreover they have another advantage. They have a unitary State and there is only one language but in India we have fourteen different languages and in speaking we cannot keep ourselves within the limit of decency. We sometimes use expression for which later on the members using it express sorrow that that expression came out of their lips Therefore in order to create a healthy convention I think the Speaker should have, as he has in every civilised world, an inherent right to expunge unprintable, obscene and vulgar expressions. In this particular case I have not secretly expunged it. I have done it by my order in the House openly. I am sorry Sj. Haripada Chatterjee did not read it and I am grateful to Sj. Subodh Banerjee who pointed out that it was done on the floor of the House. Not only I expunged it in the open House but I also gave reasons for expunging it. I did it with the full knowledge of the House, with due respect to the House, with the consent of the Members and for the growth of healthy democracy. Mr. Chatterjee has shown his bad taste in saying that I have done it without the knowledge of the House. The proceedings have been circulated to all members. Hitherto the members would not get the proceedings before six or seven months but I have directed the office to circulate up to date proceedings of the House before the end of the session. Mr. Chatterjee has raised the question of procedure. Everybody knows that the speeches are circulated to members for correction and at the time of correction this portion was shown in asterisks. If he had any objection to expunge these obscene, vulgar and unprintable words, he could have said so before the proceedings were finally printed but he has not done that. He could tell me or my Secretary that according to him these are not unparliamentary words but he has not done so.

There is another aspect of the matter. I am grateful to Mr. Chatterjee for saying that I should not have gone to the High Court for giving evidence. In this connection I would draw the Chief Minister's attention to this point also, that when I was summoned by the High Court to appear before the Court I strongly protested and I resented the language of the summons, the language of which was that "leaving all matters aside on pain of penalty you should appear before the Court in the usual summons as Speaker". Under the law Speakers are exempted from appearing before a civil court by a notification of Government but I found, so far as criminal proceedings are concerned, that privilege has not been given to the Speaker. I may also draw the attention of the Chief Minister that though I attended the High Court, on identical matter I refused to attend the Chief Presidency Magistrate's court today. I have said that if they want my evidence, they can have it in commission. I think the Speaker should not be dragged to the courts in this way.

I have stated clearly what the position is and that this has been accepted in the Speakers' Conference entirely. Though the proceedings of the Speakers' Conference is confidential but as I am mentioning it in the House, I think there will be no objection. In the Speakers' Conference we are trying to establish a very healthy democratic convention and I can tell you that the House of Commons and the American Parliament have asked for copies from me for their libraries. The Secretary General of the Commonwealth Parliament has told me that "you are by the Speakers' Conference creating a healthy tradition for democracy" and you will be glad to find that our copies of the proceedings of the Speakers' Conference are now finding place in the libraries of the Congress in Washington and the House of Commons in England.

Therefore, the decision is that the Speaker, except in the matter of unprintable, vulgar and indecent expressions, will take the opinion of the House before expunging any proceedings. What I have done has been done with the full knowledge of the House and therefore there is no question of any privilege, far less a question of privilege against a Speaker. Therefore, the question of procedure does not arise, neither arises the question of regularising the power of the Speaker. The House has inherent right to over-ride any decision. But the House did not over-ride that decision. Therefore, I have not taken upon myself any responsibility which was not due to me. Now I will be too glad if the Chief Minister will see that I am relieved from appearing before the Court. I hope he will consider this question. So the matter ends there.

Sj. Haripada Chatterjee:

একটিমাত্র কথা আমি বলব, এই নন্দ কথাটি আনপার্লামেন্টারি নয়।

Mr. Speaker:

এ বিষয়ে আমি আমার সুচিন্তিত অভিমত ত দিয়েছি।

Sj. Haripada Chatterjee:

আমি বলতে চাই, এটা যদি আনপার্লামেন্টারি হত, তবে এটাকে সম্পূর্ণ অমিট করা উচিত ছিল।

Mr. Speaker: There cannot be any more discussion. I have given painful and the longest consideration to all points of view.

Sj. Haripada Chatterjee:
আমার বক্তৃতার সময় এই হাউসএই আমি এই নগ্ন ফটো, ন্যুড ফটোর কথা বলেছি, তখন আপনি সেটা এ্যালাও করলেন। এবং প্রকিডিংসএও দেখছি, আপনি একবার এই নগ্ন শব্দটা এ্যালাও করেছেন, কিন্তু আর এক জায়গায় ডিসএ্যালাও করেছেন—
What is the meaning of that reasonableness?

Mr. Speaker: I have given my ruling for full ten minutes.

The Hon'ble Dr. Bidhan Chandra Roy: I have heard your statement regarding the privileges that the Speaker should possess with regard to his appearance before the Court. I confess that I am not aware of all the rules and regulations thereof and I shall certainly make enquiries because you are the custodian of the rights and privileges of the House and if there is any procedure—I am not talking of this particular case—by which a Court, criminal or civil, can call the Speaker to the Court, particularly in the language you have mentioned, it is regrettable because it is an insult to the House itself. I may also say that when I asked Mr. Haripada Chatterjee to withdraw his words it was not because of the essential points that he was raising—it was because he used an expression which hurt me most as the Leader of the House, namely, that you are not fit to be the Speaker of the House, you are fit to be Chairman of the Corporation. All such statements made on the floor of the House make me bend my head in shame because my colleagues in the House should think it proper to use such language towards you.

Mr. Speaker: I would like to add one word. Not that I have been summoned in an ordinary criminal case like murder, arson or theft, but I have been summoned in a matter which affects the proceedings of the House. In that particular matter the Speaker should be given protection not to appear before a Court without consultation of the House.

Sj. Bankim Mukherji: In spite of your eloquent speech, you have not given answer to the relevant points. The proceedings of the Speakers' Conference are quite irrelevant to the House. We are not concerned with what the Speakers of the various legislatures think should be the democratic tradition. It is for the members of this House who should frame these rules. Now, the pertinent question is under what rules of this House—I mean the Assembly Procedure Rules—you have got the right to expunge. I think you have yourself stated that there is no clearly stated rule—I say there is no rule.

Mr. Speaker: Perhaps you were inattentive. I have given a clear answer to that.

Sj. Bankim Mukherji: There is no clear rule. I want to know under what rule you can expunge. There is no rule in the Assembly Procedure Rules regarding this.

Mr. Speaker: I will repeat what I have said—it escaped your attention.

Sj. Bankim Mukherji: I want to know exactly under what rule you can expunge. Secondly, in the absence of that, you have got to follow the parliamentary practice. Here actual expunging—that is, not printing the words—has been done. But that is not the practice in the House of Commons. So, when there is no clearly stated rule, you have got to follow that practice—you cannot physically remove certain things. My third submission is that Sj. Haripada Chatterjee did not use anything—of course, that is a matter of opinion—which is unprintable, did not use any vulgar language. "Naked" is a word which appears in the press, in English

literature, in dictionary—of course, in the dictionary there is everything, even unutterable words are also printed in the dictionary, but in the English literature we come across this word. So, there is nothing unprintable in it. The whole thing—the episode itself—is very vulgar. The episode which he referred to was so very mean and vulgar and so corrupt—Government officers are taking naked pictures—and it was the duty of the member to bring such things to the notice of the House. Sj. Haripada Chatterjee did great service to the country by exposing such practices indulged in by Government officials and he did not express anything which could excite vulgarity. So, there was nothing in his statement which should be expunged. About the basis of your expunging, I do not agree, but that is a matter of opinion. But what I wanted to know was, under what rules this could be done, under what rules you did not allow these things to be printed physically in the proceedings. You simply stated before the House "I expunge it", but that does not allow you to actually expunge it.'

Proceedings, dated 29th January, 1957. Vol. XVI, pp. 55-59.

Ruling on the Point of Privilege regarding publication of proceeding in the "Amrita Bazar Patrika"

Mr. Deputy Speaker: Sj. Bankim Mukherji raised a matter of privilege on 22nd March, 1957, in regard to the publication of the proceedings of the House in the "Amrita Bazar Patrika" of 22nd March, 1957, which, he alleged, was a breach of privilege of the House and a copy of the paper of that date was handed over to me at the table. I reserved my ruling on that date for the purpose of looking into the proceedings as published and also of examining whether the provisions of the Parliamentary Proceedings (Protection of Publication) Act of 1956 have any bearing upon this question. In my view the Parliamentary Proceedings (Protection of Publication) Act of 1956 has no bearing upon the question raised by Sj Bankim Mukherji. This Act protects the publication of a faithful, fair and accurate report of the proceedings of the House against actions outside the House and not any action taken by the House for any breach of privilege. Indeed so far as the privileges of this House are concerned, the Union Parliament has no authority to legislate upon them. The proceedings as published in the "Amrita Bazar Patrika" of that date are correct and fair. But there is a banner line which is not borne out by the proceedings as published in the paper. The banner line is in very bold type and is as follows:—

"ANTI-NATIONAL ELECTION CAMPAIGN CARRIED ON BY C.P.I."

There is nothing in the speech of the Chief Minister which bears out the abovementioned banner line. The Chief Minister did not mention the Communist Party of India in his speech. No legitimate inference can be drawn from the Chief Minister's speech that he accused the Communist Party of India of indulging in anti-national activities. The banner line is therefore misleading and reflects a misrepresentation of Dr. Roy's speech and the banner line complained of is, in my opinion, a misrepresentation. Let us look to the law on the subject.

According to May a wilful misrepresentation of a Member's speech is considered to be a breach of privilege of the House. May says, "Wilful misrepresentation of the proceedings of Members is an offence of the same character as a libel. On 22nd April, 1699, the Commons had resolved that publishing the names of the Members of the House and reflecting upon them and misrepresenting their proceedings in Parliament is a breach of the privilege of the House and destruction of the freedom of Parliament—vide Commons Journal, 1699-1702, p. 767" (vide May 15th Ed., p. 127).

A misleading headline or a banner line which is not supported by the text of the speech is also considered to be a breach of privilege.

But I do not propose to send the matter to the Committee of Privileges inasmuch as we are at the end of this term of the Assembly and a new House has already been elected. Therefore, no useful purpose will be served by referring this matter to the Committee of Privileges, but I would like to emphasise that this kind of misinterpretation is not permissible. It appears that a complaint of the same nature was made against this particular newspaper once before and at that time the then Speaker called attention to the seriousness of such misinterpretation and warned all concerned to be more careful in reporting the proceedings of the House. On 23rd February, 1956, the then Speaker, Mr. Mukherji, observed "Newspapers concerned, I hope, would take note that they should be very careful in future in reporting the proceedings of the House". That warning, it seems, has not been properly appreciated although the House will no doubt agree with me that at this fag end of the life of the present Assembly no notice need be taken of the offences. I would once again repeat the warning given by the then Speaker that newspapers should be very careful in reporting and bannering the proceedings of the House and I hope there will be no further recurrence of such a matter in future.')

Proceedings, dated 25th March, 1957. Vol. XVI, pp. 418-20.

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